



# YOUNG LIVES IN LIMBO

The protection of age-disputed young people in Wales

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*Diara*

Princess of Wales Memorial Fund  
THE WORK CONTINUES

 Welsh Refugee Council  
Cyngor Ffoduriaid Cymru



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### **About Welsh Refugee Council**

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The Welsh Refugee Council (WRC) has twenty years experience working with refugees, asylum seekers and refused asylum seekers. It provides confidential and independent advice services across Wales, advocates for the rights of refugees and asylum seekers, supports capacity building for refugee community organisations and promotes good community relations. Its vision is to ensure that refugees and asylum seekers are safe and that they get the support they need to rebuild their lives in Wales.

The Welsh Refugee Council's work is guided by the core principle that the right to seek asylum is a fundamental human right. This year marks the 60th Anniversary of the 1951 UN Convention Relating to the Status of Refugees, an international standard that has provided the essential protection to save hundreds of thousands of lives since it was established.

The Children's Unit at the Welsh Refugee Council provides a range of child-centred services for asylum seeking and refugee children throughout Wales, including advocacy services for separated children and young people whose age is disputed, policy advice, guidance and training, and specialist play sessions.

### **About The Diana, Princess of Wales Memorial Fund**

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The Diana, Princess of Wales Memorial Fund continues the Princess' humanitarian work in the UK and overseas. By giving grants to organisations, championing charitable causes, advocacy, campaigning and awareness raising, the Fund works to secure sustainable improvements in the lives of the most disadvantaged people in the UK and around the world.

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## Acronyms

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ADSS Association of Directors of Social Services	RCC Refugee Children's Consortium
AIT Asylum and Immigration Tribunal	RCPCH Royal College of Paediatricians and Child Health
ASU Asylum Screening Unit	RIS Refugee Inclusion Strategy
AWCPP All Wales Child Protection Procedures	SCEP Separated Children in Europe Programme
CLC Children's Legal Centre	SSD Social Services Department(s)
DLR Discretionary Leave to Remain	SEF Statement of Evidence Form
HO Home Office	UASC Unaccompanied Asylum Seeking Child
IA Initial Accommodation Unit	UKBA UK Border Agency
ILPA Immigration Law Practitioners' Association	UNCRC UN Convention on the Rights of the Child
IO Immigration Officer	UNHCR UN High Commissioner for Refugees
JCHR Joint Committee on Human Rights	WSMP Wales Strategic Migration Partnership
LA Local Authority	WRC Welsh Refugee Council

## Glossary of terms

### Separated Children

Separated children are persons under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver. Some children are totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments (SCEP 2010).

### Unaccompanied Asylum Seeking Children (UASC)

When referring to separated children, the UK Border Agency (UKBA) uses the term “Unaccompanied Asylum Seeking Children” (UASC) defined as “a person who, at the time of making the asylum application, is under 18 years of age or who, in the absence of documentary evidence, appears to be under that age, and who is applying for asylum in his/her own right and is without adult family member(s) or guardian(s) to turn to in this country.” UKBA notes that a child may move between the unaccompanied and accompanied categories “e.g. where a child arrives with their parents or close relatives but are later abandoned, or a trafficked child, or one brought in on false papers with an adult claiming to be a relative” (UKBA 2010a).

Children’s rights advocates believe this terminology does not adequately reflect the circumstances of many children who are often forcibly separated from parents or carers by traumatic events beyond their control. This definition still excludes children who are cared for by a sibling who is also little over the age of 18 (SCEP 2010). It has also led to the categorisation of UASC as being somewhat different from the indigenous children of Wales. This report therefore refers to these children as separated children throughout.

### Age Assessment

The methods used by the UKBA or local authority social services to assess the age of an individual seeking asylum. UKBA will often make an initial judgement on the age of an individual which is in no way equal or comparable to a local authority age assessment, but is rather a means of placing individuals into

different categories for the asylum process. Following UKBA’s initial judgement, UKBA (or another agency) may request that social services conduct an age assessment to ascertain whether the asylum applicant is in fact a child. UKBA then review the legality of this assessment.

No method of age assessment is capable of determining the precise age of a child. Techniques used by medical examiners merely assess the likelihood that a child’s age falls within a range of ages based on comparative data, not always drawn from comparable populations. The accuracy of the assessment is often given as within a range of 2 years over or below the assessment (e.g. aged 17 years +/- 2 years, meaning within the range of 15 years to 19 years of age) (ILPA 2007).

### Merton Compliant

In 2003 the *Merton*<sup>1</sup> judgement approved the ‘Practice guidelines for age assessment of young unaccompanied asylum-seekers’ (‘Hillingdon Guidelines’). These guidelines form the basis of the term ‘Merton compliant’ age assessment and, together with subsequent case law, form the basis on which local authority age assessments are judged to be fair and lawful (CLC 2009).

### Age Dispute

Where the UKBA or social services, or both, refuse to accept the age an asylum-seeker claims to be (ILPA 2007).

### Direct Arrivals in Wales

Young people seeking asylum who arrive directly in Wales and have their first age assessment carried out by Welsh social services.

### Dispersed to Wales

Where young people have been assessed by UKBA as adults under the “very strongly suggests” criteria, or have been age assessed by English social services as over 18, they are treated by the UKBA as adults in the asylum system. They are therefore subject to being dispersed around the UK to adult accommodation whilst their asylum claims are being processed. In Wales, dispersed asylum seekers are first ‘routed’

<sup>1</sup> *B, R (on the application of) v Merton London Borough Council [2003] EWHC 1689 (Admin).*

(sent) to temporary accommodation in Cardiff and then sent to more permanent accommodation in Cardiff, Swansea, Newport and Wrexham or into England's South West Region.

#### **“Very Strongly Suggests” Criteria**

The UKBA standard for dividing asylum claimants into adults, age disputes, and children at the screening stage. “Where a claimant’s physical appearance/ demeanour very strongly suggests they are significantly over 18 years of age applicants will be considered adults and fall within the adult process” (UKBA 2010b). All other cases should be processed in the first instance as though the applicant were a child, in accordance with the 2007 Asylum Instruction ‘Processing Asylum Claims from Children.’ The young person should be informed that the local authority in which they are present will generally make an assessment of their age and communicate the result to UKBA, at which time a final decision will be made about their age.

#### **Initial Age Assessment**

A brief age assessment made by social workers which decides whether the young person is entitled to the protection offered to a ‘child in need’ under the Children Act 1989, whether the young person’s age continues to be disputed and whether further investigation and a full age assessment is required. Child protection and safeguarding risks should always form part of an initial assessment. Social workers carrying out age assessments must therefore assess and evaluate risks of trafficking, exploitation, and/ or disappearance.

#### **Full Age Assessment**

In Wales, social workers conducting full age assessments follow the Hillingdon Guidelines and use the attached proforma to record information, weighting of the evidence and the age assessment decision. Case law requires that the full age assessment is as comprehensive as possible and conducted in a clear, transparent and fair manner.

#### **Local Authority Social Services/ Children’s Services**

These terms are used interchangeably throughout the report to refer to the local authority departments with responsibility for children.

#### **Original Local Authority of Assessment**

The local authority in which an initial (or sometimes full) age assessment takes place. Separated children often move or are moved across local authority boundaries. When challenging an age assessment where no new evidence has been brought to light that was not considered at the original assessment, the issue should be treated as a complaint about the original assessment and referred to the local authority responsible for it (ADSS 2005: 13b).

#### **Local Authority of Reassessment**

Where relevant fresh evidence (such as identification documents, a medical report or professional opinion) has been submitted concerning an age assessment, there is a duty on the local authority in which the individual present to reassess the claimant.

# FOREWORD

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The Welsh Refugee Council is pleased to introduce this research, which not only improves our understanding of the experience of children and young people within the immigration system in Wales, but also presents a clear rationale for change. As the report makes clear, all stakeholders are unhappy with the current system and the age assessment process needs to be significantly improved as a matter of urgency.

It seems to me that when we get it wrong we allow children and young people to be abused and damaged by a process. The material presented within this report accurately describes a system where the majority of processes are ineffective, and there seems little to recommend it in its current form. Wales is quite rightly proud of the protection it provides to the most vulnerable. We all need to do more to ensure that we in Wales can develop a system which we are all proud to endorse and which does not exacerbate a difficult and challenging situation.

The Welsh Refugee Council is therefore pleased that we were able to produce this research and are grateful to The Diana, Princess of Wales Memorial Fund for their generous grant, which enabled us to produce this analysis. As some of you will know, I began working with and for asylum seekers over ten years ago, when I worked for Save the Children and continued with this work whilst at Children in Wales. Having been closely involved with the protection needs of children seeking asylum since 1999, I am saddened that good practice is often related to dedicated and skilled workers, rather than agency policies and agreed practices. Let us all hope that we do not have to wait another ten years for a national and consistent system of protection for this group of vulnerable children to come into force. I commend Sarah Clarke's report to you and I hope that we can all work together to ensure that the situation described herein is brought to an end as soon as possible.

**A Michael Lewis**

CEO - Welsh Refugee Council  
*Registered Social Worker*

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

“We have come from a place where age is not important to somewhere where age means everything.”

(Abdullah, 15)

The protection of separated children seeking asylum in Wales presents one of the most serious challenges to the Welsh Government’s commitments to the UN Convention on the Rights of the Child (UNCRC). Each year separated children arrive in the UK without identity documents or birth certificates and lack satisfactory evidence of their age. The process by which their age is assessed is of critical importance. Whether they are considered to be an adult or a child will not only determine the safeguarding and welfare provisions they will receive from local authorities but also the means by which their asylum claims are processed by the UK Border Agency (UKBA).

Age assessments and age disputes have become increasingly contentious issues between stakeholders in Wales. The difficulties involved in accurately assessing the age of young people and the lack of statutory guidance available has made local authorities’ assessments increasingly subject to difference. The absence of arbitration mechanisms to resolve age disputes in Wales has meant that they can result in legal challenges and judicial review. This is costly for local authorities and deeply stressful for young people whose lives are left in limbo and without safeguards as they wait for a decision on their age. A better approach is urgently needed.

The Welsh Refugee Council (WRC) believes that the concerns of all stakeholders concerning age assessments and disputes in Wales are exacerbated by a lack of qualitative and quantitative data on the number of these age assessments and disputes, how they are handled, and what the impact of these processes is on young people in Wales. *Young Lives in Limbo* is an attempt to address this information gap to gain a

greater picture of age assessments and disputes in Wales. With funding from The Diana, Princess of Wales Memorial Fund, Welsh Refugee Council (WRC) recruited a children’s policy officer to work on this topic for a 6-month period (October 2010 – March 2011). This paper is a result of her work. Through interviews with children who have undergone the age dispute process in Wales, their advocates and legal practitioners, it sought to identify the major issues facing young people undergoing age assessments and dispute procedures in Wales. It also looked at challenges facing social workers in conducting age assessments and in dealing with age disputes and reassessments. Finally, it addressed the role of UKBA in the age assessment and age dispute process. Within this limited time period, it was not possible to conduct an exhaustive investigation, but valuable information from a spectrum of sources has been collected, and clear pointers for best practice have emerged.

### Findings

*Young Lives in Limbo*, the first report to focus specifically on age assessments and age disputes in the Welsh context, brings new evidence that at every stage of the process, children are not receiving adequate protection. It finds that separated children in Wales have been wrongly assessed as adults and denied the safeguarding and welfare protections to which they are legally entitled. It concludes that current age assessment policy and practice is inadequate and inconsistent: it has resulted in children being accommodated with much older adults, detained in immigration removal centres, and subjected to forced removal to countries such as Afghanistan. Children and young people have neither been given sufficient information concerning the age assessment process, nor the opportunity to have their views taken into consideration. Many have missed out on the vital education to which they are entitled while others have

experienced serious mental health issues as a result of the process. Some have also been identified as victims of human trafficking.

The treatment of age-disputed young people in Wales indicates that many separated children have been denied the protection, provision and participation rights guaranteed to them by Welsh and UK government obligations under the UNCRC. Such practices are in conflict with the guiding principles of the UNCRC, which sets out that that all of the rights in the convention apply to all children without discrimination on any grounds (article 2); that in all decisions affecting children, their best interests must be the main consideration (article 3); that all children have the right to life, optimum survival, and development (article 6); and that all children capable of expressing a view have the right to express that view freely and to have it taken seriously in accordance with their age and maturity (article 12). Furthermore, this treatment poses particular challenges to the realisation of articles 8, 13 and 17, which stipulate respectively: the right to identity (of which age is an important component), the right to freedom of expression, and the right to access information from various diverse sources.

Since 2004 the Welsh Government has recognised children as rights-holders and has been committed to improving their lives by strengthening their capacity to participate in achieving their legal entitlements. In 2011, the Welsh Government legislatively adopted the UNCRC as the basis of all policy-making in Wales, for all children and young people (aged 0-25). In the context of age assessment, this commitment crucially not only extends to young people who are assessed not only as being under 18 but to all individuals assessed to be under the age of 25. This places an obligation on the new Welsh Government to ensure that all agencies such as local authorities know, understand, and implement the articles of the UNCRC in discharging their duties. The Rights of Children and Young Person's (UNCRC) Measure 2011 will place a duty on Welsh Government Ministers, to duly consider the UNCRC and its Optional Protocols in all decisions. Since the UK government lifted its Reservation to

article 22 of the UNCRC, the UKBA has a statutory duty, under section 55 of the Borders, Citizenship and Immigration Act (2009) to make arrangements to safeguard and promote the welfare of children in discharging its immigration, nationality and general customs functions.<sup>2</sup> Despite these welcome statutory developments, major problems concerning the policy and practice of age assessment persist.

### Concerns about Age Assessment Practice

In the first place, the UKBA's use of the "very strongly suggests" criteria to assess young people as children, adults, and a disputed category, at the initial screening stage is overly subjective. It has been known to result in children being placed in the adult welfare and asylum system from the beginning of the process. The process of age assessment across local authorities also remains inconsistent: full assessments are not routinely undertaken, there are large discrepancies in the time taken to conduct the assessment, and information sharing of age assessments between social services and UKBA differs from one authority to the next. In decision-making, it was found that, contrary to case law guidance, too much emphasis is placed on the physical appearance, journey, and asylum claims of the young person.

Considerations of cultural and personal background and the opinions of other professionals such as doctors, teachers, foster carers and children's advocates are also not given enough weight. Concerns were also raised about the fairness and independence of the decision-making of some local authorities in Wales: it is perceived that in some cases, UKBA has undue influence on age assessment decisions. Inconsistent practice in undertaking reassessments was also attributed to an over-reliance on UKBA information, which is considered prejudicial to the independence and lawfulness of the assessment. There are also difficulties in challenging age assessments in which Welsh local authorities are the original authority

<sup>2</sup> Section 55 is intended to bring immigration officials in line section 11 of the Children Act 2004 (in Wales the section 28 duty) which places a similar duty on other public organisations, but from which the UKBA had previously been exempt.

of assessment. Finally, there appears to be a disposition in some local authorities to amend age assessments where new evidence appears to indicate that the child is an adult, but not the other way around.

### Dispersal

The dispersal system further compounds these concerns. Dispersed young people undergoing an age dispute with whom WRC come in contact are frequently unaware that they have had an age assessment and have no documentation of the original assessment. They are not provided with advice concerning their right to challenge the initial age assessment. Furthermore, no information concerning age assessments is transferred to the Initial Accommodation unit to which age-disputed young people are routed (sent) and dispersed. This routinely means that age-disputed young people – who may be children – are only identified upon arrival at an adult facility. These practices suggest that children may not be identified and duly protected.

Difficulties establishing whether an age assessment has already occurred prior to dispersal were also reported. Legal practitioners interviewed highlighted their concern that dispersal seriously complicates their ability to challenge the client's original assessment, as local authorities will insist that young people are reassessed in the new local authority in which they find themselves. The lack of solicitors specialising in welfare and immigration law in Wales makes challenging age disputes more difficult.

It has become particularly difficult to get Welsh local authorities to reassess dispersed young people, even where fresh evidence has come to light. Local authorities in Wales must continue to reassess, since the Supreme Court case of *A & M*<sup>3</sup> did not overrule the ADSS Joint Working Protocol stipulation that, “in the event that new evidence has been brought forward, the host local authority

should continue to reassess the age of the applicant, taking full account of all sources of information” (ADSS 2005: 14). By refusing to reassess age-disputed young people, local authorities may be ignoring the welfare and protection of a potential child in need in their area.

### Culture of disbelief

It appears that the poor treatment of children seeking asylum in Wales is driven in part by a much-reported culture of disbelief within both the UKBA and Social Services Departments.<sup>4</sup> Despite evidence that children have been wrongly assessed and mistreated as adults by both the UKBA and local authorities, there appears to be an entrenched belief that the majority of age-disputed young people are adults posing as children. The report finds that this is particularly the case with young people who have been dispersed to Wales: even in cases where the quality of these age assessments were evidently poor before they arrived in Wales and non *Merton* (the standard for fair and lawful age assessments) compliant, and where substantial fresh evidence has come to light to support the young person's claim to be a child, certain local authorities are deeply reluctant to reassess.

### Guidance, training and oversight

The lack of guidance, training, supervision, and alternative means of arbitration and mediation on age assessments in Wales is driving inconsistent practice. Social workers highlighted the difficulties of making critical decisions on age in the absence of clear, succinct guidance and requested guidance that would aid the development of best practice in this area.

Given the flaws in current age assessment practice, it is recommended that holistic guidance is adopted in line with recommendations for best practice under the UNCRC.<sup>5</sup> As stated by the Committee on the Rights of the Child:

<sup>4</sup> For further literature concerning the culture of disbelief in decision making see ECPAT and Children's Commissioner for Wales (2009), Amnesty International UK (2004), UNHCR (2005), Independent Asylum Commission (IAC) (2008), Immigration Advisory Service (Pet-titt 2009).

<sup>5</sup> See UN Committee on the Rights of the Child (UNCRC) General Comment No. 6 (2005) *Treatment of Unaccompanied and Separated Children outside their Country of Origin* and EXCOM Conclusion (2007) *Children at Risk*, No. 107 (LVII) – 2007., available from [www.unhcr.org/4717625c2.html](http://www.unhcr.org/4717625c2.html).

<sup>3</sup> *R (on the application of A) v London Borough of Croydon: R (on the application of M) v London Borough of Lambeth* [2009].

The (age) assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child, giving due respect to human dignity, and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt (2005: para 31(a)).

The age assessment process requires a multi-disciplined methodology, which abides by scientific principles to ensure coherent and consistent outcomes, regardless of the capacity of the local authority and the complexities of each individual case.<sup>6</sup> To comply with the UNCRC in this procedure, age assessments in Wales should engage various disciplines and methodologies to ensure a holistic assessment takes place. To avoid assessments that are made on subjective cultural and biological assumptions, objective methods should be used that are thorough and scientific in their assessment and will aid or ensure safer and more accurate decisions. Cultural, psychosocial and medical expertise and information sources are vital in the decision making process.

It is in the best interest of the child that age disputes are resolved quickly and that they are not subjected to a protracted dispute.<sup>7</sup> Since age will affect how the asylum claim is handled, the age of the separated children should be established prior to the substantive asylum interview taking place.

The UNCRC General Comment 6 states that, “the assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques” (2005: para 20). In line with the UNCRC, the age assessment must take into account the vulnerabilities of the separated child and their individual needs, allow the child to fully express him/ herself, be given due weight in accordance with their age and maturity, and give the child the opportunity to respond to issues that are identified in the assessment process. It is also recommended that an independent advocate

or guardian be appointed for each young person (ibid: para 21 and 33). Independent advocates can ensure that the young person is properly represented, that his or her views are expressed, and best interests upheld, their rights safeguarded in a foreign and unfamiliar process, and ensure that a fair and transparent process has occurred.

The establishment of independent, multiagency, and holistic residential age assessment centres continues to be the aspiration for a model of best practice in age assessments. Given the current financial climate, it is recommended that age assessment should be a holistic multiagency process conducted over an adequate period of time, drawing on the expertise of a wide range of professionals including, doctors, teachers, foster parents, child advocates and social workers. Independent panels comprised of suitably qualified professionals including psychologists, doctors, social workers, teachers and children’s advocates should be established to determine age where this is in dispute. Such measures would serve as an initial step toward meeting the UNCRC criteria.

The current proposal to develop an All Wales Age Assessment Toolkit following the drafting of the All Wales Protocol on Unaccompanied Asylum Seeking and Refugee Children is a welcome development in redressing the gap in child protection procedures. Such guidance must be based on the best interests of the child principle to fully reflect Welsh Government and local authority obligations to the UNCRC and UKBA’s section 55 safeguarding duty. It will need to be developed across agencies, and include representatives from leading advocacy organisations to ensure that the best interests of the child are independently represented, and that any guidelines which are developed are fully accountable and transparent. Furthermore, guidelines must provide step-by-step directions on best practice in the conduct of age assessments, which must be implemented through the consistent training of social workers involved.

<sup>6</sup> See Mougne and Gray (2011) *A new approach to age assessment of Unaccompanied and Separated Children: Current practices and challenges in the UK*.

<sup>7</sup> See Crawley (2007: 130) *When is a Child not a Child? Asylum, Age Disputes and the Process of Age Assessment*, who recommends a period of seven days.

The contentiousness and costs involved in legal challenges to age disputes are driven by a lack of safeguarding, oversight and alternative routes of mediation. The consistent provision of independent advocates could also help ensure procedural fairness during the assessment and could help prevent legal challenges to the process. There is also a clear need for an independent, multiagency body to conduct assessments, or at the very least, to review the results of local authority assessments when complaints are made against them. The establishment of mediation and arbitration routes prior to legal challenges and judicial reviews would reduce the contentiousness and costs involved in the issue. It would enable greater partnership between stakeholders. Most importantly, it would enable a faster resolution of the increasingly protracted process of age disputes and take young people out of the limbo of the dispute process.

# RECOMMENDATIONS

## To the Welsh Government:

- Work with the UK Government to ensure that all children living in Wales who are subject to the asylum process have their rights under the provision, protection and participation articles of the United Nations Convention on the Rights of the Child (UNCRC) fulfilled.
- Ensure that arrangements to safeguard and promote the best interests of children seeking asylum are embedded throughout the age assessment process in Wales.
- Ensure that the protection gaps facing separated children and age-disputed young people in Wales are addressed within Welsh Government's Children's Scheme under the Rights of Children and Young People (UNCRC) Measure (2011) by recognising separated children as rights holders, who have a right to have their voices heard, a right to receive a fair and transparent age assessment, and a right to be guided and supported through the process by an independent advocate.
- Demonstrate leadership on age assessment reform in Wales by ensuring that the development of all-Wales multiagency guidance reflects Welsh Government's statutory commitment to the UNCRC.
- Oversee the appointment and training of independent advocates to ensure that separated children have full access to the protections, provisions and participation rights of the UNCRC.<sup>8</sup>
- Provide training to children's advocacy workers across Wales concerning separated children in general, and the age assessment process in particular, to ensure that young people receive the advocacy to which they are entitled. WRC has provided initial training on working with separated children to advocates in areas of Wales, however, further in-depth training for

advocates on the complexities of age assessment is required.

- Work with WLGA and local authorities to establish alternative mediation and arbitration routes, based on a shared commitment to the best interests of children, to challenge age assessments.
- Establish independent panels comprised of suitably qualified professionals including psychologists, doctors, social workers, teachers, and children's advocates to determine age where this is subject to an ongoing dispute. These panels should work with the Welsh Local Government Association (WLGA), local authorities and the Care and Social Services Inspectorate of Wales (CSSIW) to ensure the legality and fairness of age assessments.

## To the Care and Social Services Inspectorate of Wales (CSSIW):

- Establish oversight mechanisms to ensure the legality and fairness of age assessments.
- Develop inspection criteria in order to measure and evaluate age assessment practice, process, and procedures in local authorities on an ongoing basis.

## To the Welsh Local Government Association (WLGA):

- Draft guidance for age assessments to be carried out by social workers in partnership with holistic, multiagency assessment teams (including paediatricians, psychologists, teachers, and medical professionals) over a reasonable period of time.
- Update the age assessment proforma to set out the benefit of the doubt principle at the beginning, avoid resembling the asylum interview by being more child-centred and collaborative, and ensure the input of other professionals in the assessment.

<sup>8</sup> The Scottish Refugee Council's Guardianship Service pilot provides a strong model for Wales to adopt. See Scottish Refugee Council Guardianship Project <http://www.aberlour.org.uk/scottishguardianshipservice.aspx>. The Welsh Government should consider the findings of the Scottish Guardianship Service project pilot particularly in respect to the links between separated and trafficked children.

- Produce a universal age assessment summary sheet, which can be shared with the UKBA. In line with data protection law and the principle of informed consent this summary sheet should include:
  - An outline of the age assessment process – where it was conducted, who was present (E.g. interpreter in person), whether the person assessed was informed of the reason for assessment);
  - Whether other sources of data were considered (E.g. documentation, medical reports, the opinions of other professionals such as teachers, carers and foster parents);
  - A summary of the social workers analysis and weight given to conflicting information;
  - How the decision was communicated to the child/ young person.
- Fulfil educational duties to provide education for children and young persons who are present in their authority.
- Ensure that the age assessment process in Wales is based on the concept of children as rights holders by:
  - Ensuring the proper application of the benefit of the doubt principle when dealing with all young people who claim they are children until such time as a holistic, multiagency age assessment has been concluded;
  - Consistently carrying out full age assessments. Where the benefit of the doubt has been properly applied and it is still decided that a young person needs an age assessment, local authorities should be consistent in carrying out full age assessments which reflect the social work core assessment framework and statutory requirements;
  - In accordance with UNCRC article 13, making sure that children are kept informed and understand the age assessment procedure and the implications of decisions throughout the process;
  - Providing young people with a competent CRB-checked interpreter, trained in working with children, who must be physically present at the assessment. Interpretation should not take place over the phone;
  - Ensuring that any inconsistencies arising in the age assessment interview are put to the young person;
  - Providing the young person with a full copy of age assessment;
  - Avoiding the conduct of age assessment interviews in police stations or prisons, except for an initial assessment to secure release of someone who could be a child, pending further assessment.

### **To the Care Council for Wales**

- Ensure that social workers in Wales receive ongoing training on best practice in age assessments and developments in case law. This could be provided by specialist advocacy organisations such as the WRC or legal practitioners with age assessment expertise. Incorporate best practice training on working with separated children and age-disputed young people into the Social Work curriculum across Wales.

### **To Local Authorities in Wales:**

- In conjunction with an independent panel of experts (including paediatricians, psychologists, teachers, social workers, children's advocates and foster carers) develop and provide comprehensive training on holistic age assessments to all members of local authority social services who are likely to come in contact with separated or age-disputed young people.

- Ensure holistic, transparent, legal and fair age assessment by:
    - Not relying too heavily on physical appearance, or on UKBA screening decisions or initial age assessment decisions;
    - Not placing inappropriate emphasis on the young person's journey to the UK;
    - Ensuring that young people's cultural and educational background are given fair and balanced consideration;
    - Duly considering the views of other relevant professionals including paediatricians, psychologists, teachers, social workers, children's advocates and foster carers into the decision on age.
    - Work with the WLGA to ensure that data protection law is not breached and information gathered in age assessments is not misused in the credibility findings of asylum decisions by sending the UKBA caseworker an appropriate summary of evidence. This should include:
      - An outline of the age assessment process – where it was conducted, who was present (ie interpreter in person, whether the person assessed was informed of the reason for assessment);
      - Whether other sources of data were considered (eg. documentation, medical reports, the opinions of other professionals such as teachers, carers and foster parents);
      - A summary of the social workers analysis and weight given to conflicting information;
      - How the decision was communicated to the child/ young person.
  - If a fuller report is needed (e.g. for a court or tribunal hearing), the social worker should write something specifically designed for that purpose in the same way as social work reports are prepared for the family court.
  - Continue to reassess the age assessments of young people in their area. Where young people who are challenging an age assessment are dispersed to Wales, in the event that new evidence has been brought forward, the host local authority has a duty to reassess the age of the applicant, taking full account of all sources of information (2005: 14). This duty is not affected by the 2009 *A & M* decision.
- To the UK Border Agency (UKBA):**
- Keep the harmful age dispute process to a minimum. Where the testimony and evidence is compatible with an individual being under 18, UKBA must treat them as a child and not enter them into the age dispute process.
  - Follow UKBA guidance and ensure the proper application of the benefit of the doubt principle when dealing with all young people who claim they are children until such time as a holistic, transparent, legal and fair age assessment has been concluded.
  - Do not proceed with the asylum claim until the age of the separated child has been established.
  - Do not accommodate young people who claim to be children with older adults. Young people undergoing an age dispute should be housed together in same-sex accommodation until such time as the dispute is resolved.
  - Demonstrate how the section 55 safeguarding duty is being implemented in policy and practice to ensure that children who are age-disputed are given the benefit of the doubt. Explain how the UKBA's Children's Champion is working to protect and safeguard children with regard to age disputes, what age assessment training UKBA staff are receiving,

and how lessons learned concerning age disputes will be applied across the agency.

- Publish statistics of the outcomes of age disputes to contribute to a greater understanding of the situation facing young people in Wales.

#### **To the UKBA and Local Authorities:**

- Enforce a clear separation of roles in the age assessment process. Local authority age assessments need to be based on social work competencies and should not incorporate UKBA concepts such as credibility or enforcement. Social workers should maintain the confidentiality and trust of age-disputed young people. Social workers need to acknowledge that they are accountable for their actions to all suspected children-in-need before colleagues, employers, UKBA and the law, and that these accountabilities may conflict.
- UKBA should take steps to ensure that financial and immigration pressures do not impact on the outcome of age assessments.

#### **To Local Authorities, UKBA and Advocacy Organisations:**

- Respect should be shown for the decisions of social workers who have followed correct procedures.
- Social workers should not feel pressured to assess age-disputed asylum seekers as being over 18. Managers who wish to overturn a social worker's decision must meet the child and ensure that a fair and accurate assessment takes place.
- UKBA should respect the decisions of social workers if it is found that the age assessment has been fairly conducted and should in no circumstances pressurize social workers to make adverse decisions.

- Children's advocates and legal practitioners must also respect when a fair age assessment has been carried out which finds the young person to be an adult. In such cases, it would be more helpful for advocates to find alternative avenues of providing support.

- Further research concerning the extent of age disputes, the manner in which they are undertaken and the impact of assessments and disputes on children in Wales is recommended.

# PART I: INTRODUCTION AND BACKGROUND

## The aims of this report

Age assessments and age disputes have become increasingly contentious between stakeholders in Wales. Children's advocates and legal practitioners are deeply concerned that the treatment of young people undergoing a dispute about their age poses major challenges to the realisation of the rights of children under the UNCRC and Welsh Government legislation. Anecdotal evidence suggests that social workers in Wales are concerned by the safeguarding risks involved in accommodating children who may be adults with other minors. Local authorities in Wales face financial pressures since determining an asylum seeker to be under 18 means that they must treat these young people as children in care. While UKBA reimburses these expenses, social workers in Wales have noted that they are often left with some financial costs to bear. Meanwhile the UKBA argues that the assessment and dispute of age is necessary to challenge older applicants and divert them to the adult asylum process so that "adults posing as children do not become a problem" (Home Office 2007: para. 24).

The difficulties involved in accurately assessing the age of young people and the lack of statutory guidance available has made local authorities' assessments increasingly subject to dispute. The lack of arbitration mechanisms to resolve age disputes in Wales has meant that disputes can result in legal challenges and judicial review. This is costly for local authorities and deeply stressful for young people whose lives are left in limbo and without safeguards as they wait for a decision on their age, which is crucial for their welfare and asylum claims. A better approach is urgently needed.

The WRC believes that the concerns of all stakeholders concerning age assessments and disputes in Wales are exacerbated by a lack of qualitative and quantitative data on the number of age assessments and disputes, how age assessments and age disputes are handled, and what the impact of these processes are on young people in Wales.

Working with modest resources, the WRC has attempted to address this information gap, to gain a greater picture of age assessments and disputes in Wales. Through interviews with children who have undergone the age dispute process in Wales, their advocates, and legal practitioners it sought to identify the major issues facing young people undergoing age assessments and dispute procedures in Wales. It also looked at challenges facing social workers in conducting age assessments and in dealing with age disputes and reassessments. Finally, it addressed the role of UKBA in the age assessment and age dispute process.

This paper aims to provide evidence, including the voices of young people, to provide stakeholders with a better understanding of what young people undergoing the age assessment and dispute process are facing. While it is beyond the scope of this report to propose a specific methodology for age assessments it looks to identify best practice in age assessment in accordance with the UNCRC principle of 'the best interest of the child', to which all bodies have a statutory commitment. Finally, it makes recommendations for best practice for all stakeholders involved to strengthen and improve this complicated procedure in Wales.

## Methodology

With funding from The Diana, Princess of Wales Memorial Fund, The WRC recruited a children's policy officer to work on this topic for a 6-month period (1st October 2010 – 31st March 2011). This paper is a result of her work. Within this limited time period, it was not possible to conduct an exhaustive investigation, but valuable information from a spectrum of sources has been collected, and clear pointers for best practice have emerged.

Information was gathered in the following ways:

- The UK legislative and policy framework concerning age assessments was reviewed.
- Existing research reports and position papers on age assessments from academics and NGOs in the UK were examined.
- Although there is no Wales-specific policy on age assessments, documents from the Welsh Government, WSMP and other Welsh bodies were reviewed for references to age assessments.
- Where available, written information on the age assessment procedures of individual Welsh local authorities was sought.
- WRC case files were reviewed (with permission) to glean further information about how age disputes are handled.
- Six in depth semi-structured interviews were carried out with separated children who had undergone the age dispute process. The interviewees were selected because a) they are living in Wales and are in contact with the WRC's Children's Advocacy Officer, b) they had experienced difficulties going through the age assessment process, c) they were willing to be interviewed. More individuals met these criteria than time allowed for interview, so the sample size was affected by the time limits of the fieldwork element of the project. Additional information about those interviewed was added from case files. All names of children have been replaced by pseudonyms to protect their identity.
- Contact was made with 4 social services departments in Wales: Wrexham, Monmouth, Swansea and Cardiff. Conversations were held with 3 social workers who regularly undertake age assessments and one manager of a social service department about the situation of age assessments in these local authorities in Wales. Setting up interviews with social workers was time consuming and more interviews with social workers could have been conducted had more time been available for the project. Difficulties were also noted in gaining clearance from social services management, which would have enabled social workers with considerable experience of age assessments to partake in this research.
- In depth, semi-structured interviews were conducted with the Children's Advocacy Officer and the Senior Caseworker at the WRC. WRC caseworkers in Wrexham, Cardiff, Swansea, and Newport were also contacted concerning their experiences with age assessments. The Children's Advocacy Worker has 3 years experience and has offered guidance and advocacy to over 150 age-disputed young people in Wales.
- Interviews were conducted with 4 welfare solicitors and 2 barristers who specialize in age dispute cases and have experience of the age dispute process in Wales. These Legal practitioners have combined 26 years of experience of hundreds of age dispute cases across the United Kingdom.
- Interviews were conducted with children's advocacy representatives from Displaced People in Action, Cardiff, the Children's Advocacy Team at Tros Gynnal, a Development Officer at a youth club for separated young people, and age-disputed children in Cardiff.

- Meetings were held with representatives of centres of expertise, including the Children's Commissioner for Wales, Wales Strategic Migration Partnership, members of the All Wales Children's Asylum Policy Group, the Refugee Council, and the Children's Legal Centre.
- A meeting was held with a Senior Executive Officer of UKBA Asylum Team 3 (Wales & South West of England).

### **Anonymity**

Information in this report relates to the following local authorities in Wales (Monmouthshire, Wrexham, Swansea and Cardiff). In the findings section of the report, where comments are made about specific local authorities these are anonymised. The names of individuals who contributed information are listed in the introduction. In the findings section of the report, quotes from individual contributors are anonymised.

## BACKGROUND

### Amir, 14 Case study 1

Amir fled Afghanistan in 2007 fearing forcible recruitment by the Taliban following the murder of his father. He arrived in the UK in 2008 on the back of a lorry having travelled for six months through Iran, Turkey, and France. Upon arrival in the UK, he was screened by a UK Border Agency (UKBA) immigration officer. Amir stated he was 14 years old however the immigration officer considered him 'age-disputed.'

Amir was referred to a local authority who carried out an age assessment in a police station. He was assessed as being 19 years of age or older. The original age assessment was considered by Amir's solicitors to be non *Merton* compliant: it was poorly detailed with most pages left blank and was only signed by one social worker.

Amir entered the adult asylum system and was sent to Wales while his claim was being processed. In Wales he was accommodated in an Initial Accommodation unit with adults. Amir's asylum claim was processed by the UKBA as an adult and he was refused asylum. At this point Amir was sent identity documents from Afghanistan. WRC's Children's Advocacy Officer requested that the original local authority of assessment carry out a reassessment of his age based on the fact that the first assessment was not *Merton* compliant and on the basis that he had since received his ID document. The original authority refused to reassess.

A local authority in Wales was contacted to request that their social workers carry out a fresh age assessment, having a duty to do so on the basis of the new evidence, his identity document, which he had not had in his possession in the original authority of assessment. The Welsh local authority responded that before carrying out an age assessment they needed to check with UKBA that the identity document was genuine. Social workers collected Amir's identity document

without undertaking a new age assessment. Amir's legal team argued that social services have no right to insist on receiving this proof prior to carrying out an assessment.

Amir was then detained in a Welsh prison and later sent to an immigration detention facility in Oxford. He was served with removal directions to Afghanistan and kept in the adult detention facility for almost two weeks. When he found out he was going to be deported, Amir tried to commit suicide. He lost a lot of weight and could not sleep.

Amir's legal team lodged an application for a judicial review against both the original local authority of assessment and the Welsh local authority who were obliged to reassess. On the day he was due to be deported, Amir was taken to the airport and was about to board his flight when he was told that his ticket had been cancelled and that he was being returned to Wales.

Amir returned to Wales where the local authority had been served with an interim order to provide him with accommodation. After a delay of two weeks, a full reassessment of Amir's age was carried out by social services. He was assessed as 17 years old. Social services agreed to provide full support to Amir and he was placed in full time school.

Initially, UKBA refused to accept any fresh asylum claim or re-submission of an old claim for Amir. They then agreed to reassess his asylum claim according to their own guidelines on 'Processing an Asylum Application from a Child' but later refused to reconsider his asylum application on the grounds that his previous, adult, asylum application had already been processed.

In March 2011, Amir was detained for the fourth time by UKBA, this time during class at school. He was served with removal directions to Afghanistan. Amir's legal team were in the midst of pursuing two judicial reviews against UKBA at the time of his detention. After spending over a month in detention, Amir was released back under the care of Children's Services whilst awaiting progress on his judicial reviews.

“I’d never, ever, come across children like these. They were like mini-adults. They had wrinkles around their eyes and dark rings. Many limped from polio ... they had lost limbs through bombings and the attacks in Kabul... They’re very streetwise because only half of them go to school at all. They have to work to support their families, they beg and sell things.”

Hamilton-Little, February 2011

### **Who is subject to having their age disputed?**

Separated children are a non-homogenous group of young people who leave their home country alone to make a perilous journey to the UK to seek asylum for various reasons. They may have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Their parents may have been killed, imprisoned, or disappeared. They may be in danger of being forced to fight or become a child soldier. Some may be fleeing war and conflict or poverty and deprivation. Others may have been trafficked into the UK or been sent abroad by parents or family. The pre-flight experiences to which separated children are exposed may place them at increased risk of developing psychological problems (Ayotte 2000; Save the Children 2005; CLC 2009).

No comprehensive statistics are available concerning the number of age assessments, age disputes or reassessments which take place in Wales each year. One local authority host to larger numbers of separated children reported that 49 age assessments were carried out between January 2008 and October 2010 (FOIA Request 2010). In addition, in one Welsh local authority in 2010 four children had had their ages assessed by social services as under 18 but argued that they were younger than the age at which they had been assessed (Tros Gynnal 2011). Finally, in 2010, the WRC dealt with 51 cases of young people who had been assessed as adults but claimed to be children. Of these young people, 19 were reassessed by local authorities in Wales and the South East region of England as children, with the outcomes pending for another 10 cases (WRC 2011).

While no statistics are kept concerning the origin of young people undergoing age assessments and

disputes in Wales, anecdotal evidence from local authorities suggests that the majority of young people undergoing their first age assessment or reassessment in Wales come from Afghanistan while other prominent countries of origin include Iran, Iraq, Somalia, Eritrea and Vietnam.

Statistics for the whole of the UK including Wales reveal that between 2004 and 2008, 41-45% of individuals claiming to be unaccompanied asylum seeking children had their ages disputed by UKBA (Home Office 2005, 2006, 2007a, 2008, 2009). In 2009 and 2010 this figure dropped to 32-35% of applicants (UKBA 2009; 2010).<sup>9</sup> Despite the welcome decline in the percentage of age disputes, the number of individuals who have had their ages disputed who are ultimately assessed as children remains high. One study conducted by the Refugee Council in 2005, found nearly 50 per cent of age-dispute cases to be children (RCC 2009). A study in 2006 of age-disputed cases sent to Oakington (an adult detention centre) found that 60% of these “adults” were in fact children (Crawley 2007). Since UKBA still records only the number of unaccompanied children initially age-disputed and does not subtract those considered minors after age-assessment and appeals, it is difficult to establish whether this situation has improved (Aynsley-Green 2006: para 2.1.3; Un Committee on the Rights of the Child 2008: para. 70(b); RMJ 2009: 5). In 2010, at least 27 children in the UK were mistakenly assessed as adults detained by the UK Border Agency in adult prisons or detention centres (Refugee Council 2010).

### **Why do young people have their age disputed?**

Many asylum seekers arriving in the UK do not have a birth certificate or passport. Most of the world’s

<sup>9</sup> The decrease in the number of age disputes can be understood in the context of an overall decline in the numbers of individuals, adults and children alike, seeking asylum in the UK.

population do not own passports while some 51 million births go unregistered each year in developing countries (UNICEF 2010). Others may have been provided with falsified documents, which indicate that they are adults by smugglers or traffickers in an attempt to avoid safeguarding scrutiny (CCfW 2010). Most separated asylum children arrive in the UK by plane on a false passport, or enter clandestinely, having been smuggled into the UK on lorries from continental Europe. Some of these children eventually find their way or are directed to a UKBA or local law enforcement office where they make an asylum application.

The UKBA argues that the assessment and dispute of age is necessary to challenge older applicants and divert them to the adult asylum process so that “adults posing as children do not become a problem” (UKBA 2007b: para 24).

### **What are the difficulties of assessing age?**

Age assessment is not an exact science nor is there one definitive approach to ascertaining with certainty the age of an individual.<sup>10</sup> Guidance on assessing age from the Royal College of Paediatrics and Child Health (RCPCH) states: “Overall, it is not possible to actually predict the age of an individual from any anthropometric measure, and this should not be attempted” (1999: 13). It goes on to note, “for young people aged 15–18, it is even less possible to be certain about age. There may also be difficulties in determining whether a young person who might be as old as 23 could, in fact, be under the age of 18. Age determination is an inexact science and the margin of error can sometimes be as much as five years either side. Assessments of age measure maturity, not chronological age” (ibid).

In addition to a lack of exact scientific methods to assess age, social workers face particular

problems in assessing the age of young people seeking asylum. Assessors may not be aware, or have received training, in cultural factors and may have little understanding of the backgrounds from which separated children have come. Just as in the UK, within ethnic and national groups there are wide variations in young people’s sizes and ages of puberty. In certain parts of the world boys grow facial hair earlier than boys in Europe. In Afghanistan, (where the majority of separated children seeking asylum and age-disputed young people in the UK come from), it is common for boys of 13 or 14 to grow a beard. Young people seeking asylum may also look and act older than they are due to their experience in their country of origin and the difficulties of their journey to the UK, which often takes months of walking through rough terrain, dangerous boat crossings and hiding within or beneath lorries.

Young people may also have given different ages to different authorities and professionals along the route to the UK as a means of protecting themselves against the perceived vulnerability of being identified as a child. They may also feel coerced into accepting a date of birth or age and may ill advisedly maintain this age with professionals having received this advice from agents, traffickers, other young people.

### **What is recognised as best practice in age assessments?**

The UN Committee on the Rights of the Child interprets the UNCRC, and while its views are not legally binding, they are highly influential in interpreting what is expected of State parties in their treatment of separated children during the asylum process. General Comment No. 6 (2005), which provides guidelines for age assessments is therefore of particular relevance to Wales:

Age assessments should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the

<sup>10</sup> This has been repeatedly acknowledged by the senior judiciary, including in recent judgements such as that of the Supreme Court in the case of *R(A) v Croydon*; *R(M) v Lambeth* [2009] UKSC 8.

event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such.

Commenting on the UK context, the RCPCH (2007) has stated:

We accept the need for some form of age assessment in some circumstances, but there is no single reliable method for making precise estimates. The most appropriate approach is to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive, behavioural and emotional assessments. Such assessments will provide the most useful information on which to plan appropriate management.

In a report, which outlines a UNCRC-approach to the process of age assessments, Mougne and Gray (2011: 7) note that the state should employ a multi-faceted approach, through the engagement of various disciplines and methodologies.

This includes objective methods that are thorough and scientific in their assessment of age where it will aid or ensure safer and more accurate decisions. Rather than see medical assessments as invasive, provided there is strict adherence to safeguards the use of such methods in borderline cases will ensure genuine children receive the protection they are entitled to, upholding the overriding principle of best interests. Unless proven to be harmful, their use in such cases may therefore be considered as proportionate and necessary.

They go on to say (ibid):

...States must actively involve cultural, psycho-social and medical expertise and information sources in the decision making process. Without such a broad analytical awareness, the cultural and biological assumptions of social workers are likely to result in misplaced judgements.

### **What major concerns have been noted about age assessment procedures in the UK in general and Wales in particular?**

*'When is a child not a child? Asylum, Age Disputes and the Process of Age Assessment'*, (Crawley 2007) remains the most comprehensive examination of age assessments and disputes across the UK.

Crawley identified two major problems concerning age assessments in the UK: the lack of statutory guidance for age assessment in Britain, and the failure to implement what policy exists. She noted that the assessment of age by UKBA at screening units and by social workers and immigration judges essentially consisted of a "rapid visual assessment" based on a socially constructed understanding of what a child ought to look like (2007: 49). She also identified inconsistent practice between involved departments, particularly between social services and the UKBA, and inter-agency conflicts arising out of opposing age assessment decisions as major concerns. These conflicts reflect the potential tension between the provision of welfare and immigration control. Another major finding in the study was the lack of empathy and care from the involved departments towards children undergoing age assessments, and, a reported 'culture of disbelief' that surrounds institutions that are regularly tasked with conducting an age assessment. The study also outlined the critical impact that an erroneous age determination can have on a young person's protection, welfare, asylum claim, and wellbeing.

The report made several key recommendations. Primarily, it advised that UKBA must follow its own policies and reduce age disputes by giving children the benefit of the doubt. It then recommended the establishment of regional centres, independent of UKBA and social services, where age assessments could be made over time by a multiagency team of experts.

While no specific research on age assessment has taken place in Wales, concerns over age assessment procedure in Wales have been raised by children's advocacy organisations for the past ten years. In 2001,

Save the Children organised a conference on the issue. That organization's 2005 report *Uncertain Futures: Children seeking asylum in Wales* built on the outcomes of this conference and noted that age assessments were "an increasingly topical issue" (2005: 62).

A 2008 update to this report, *Children in Severe Poverty in Wales: An Agenda for Action* (Agenda for Action), identified concerns of frontline practitioners around age assessments and age disputes in Wales. It cited anecdotal evidence that age disputes occur more often in areas that have higher numbers of separated young people and that these authorities were said to rely more upon short interviews and establishing credibility whilst smaller authorities tended to conduct longer assessments and focused more on pastoral elements. Major difficulties were reported in social work age assessment practices in Wales. These were perceived to be due to a lack of cultural knowledge, uncertainty as to who was responsible for the individual's immediate care, and, particularly in non-dispersal areas, unfamiliarity with protocols and guidance relating to age assessments. Non-social work respondents were critical of the quality of some social services' age assessments and suggested the underlying motivations could be financially driven. Practitioners also identified concerns about the placing of children into adult accommodation (and the potential for people whose age is as yet undetermined being placed with children) until age disputes are resolved.

On the basis of these findings, *Agenda for Action* recommended that UKBA collect and publish data on the number of age-disputed cases in Wales; Local authorities ensure all relevant staff receive ongoing age-assessment training based on current best practice; Wales Strategic Migration Partnership (WSMP) work with relevant partners to convene a working group to develop proposals for a Wales wide protocol or policy on conducting age assessments, using current best practice.

Most recently, ECPAT's *Bordering on Concern* (2009) report commissioned by the Children's Commissioner for Wales, revealed concerns that one young female subject to an age dispute may have also been the victim of human trafficking.<sup>11</sup>

Despite some notable developments in policy and practice in the UK and Wales, outlined in the next section, few of the recommendations from ILPA's 2007 report and Save the Children's 2005 and 2008 reports have been implemented. The findings section of this report illustrate that many of the concerns outlined in these studies, in particular the lack of guidance and flaws in age assessment practice, persist. This illustrates the protracted nature of these concerns, despite research and campaigning for improvements in this area, and underlines the urgent need to develop durable, fair and legal solutions for age assessment policy and practice.

<sup>11</sup> There are a number of important ongoing research and policy developments concerning human trafficking in Wales which are relevant to the issue of age assessments. These include "Bordering on Concern" and "Knowing no Boundaries." Welsh Government commissioned ECPAT UK to create an on-line resource, *In Your Hands*, to assist practitioners in identifying and safeguarding children who might be or have been trafficked. Policy developments include the forthcoming update of an all Wales child trafficking protocol which will form part of the multi-agency all Wales Child Protection Procedures, and the establishment of anti human trafficking coordinator to be hosted within Gwent Police. However little is still known about the impact of age disputes on trafficking in Wales. It is worth noting the first 6 children supported by the Scottish Refugee Council's Guardianship Project were all identified as suspected victims of trafficking. The issues raised in this report on age disputes are therefore of particular significance to anti-trafficking monitoring groups working to prevent trafficking and to the newly created position of All Wales Anti Human Trafficking Co-ordinator as they work to better understand the links between age disputes and trafficking.

## LAW AND POLICY CONTEXT

The age assessment of young people seeking asylum in Wales falls between cross-cutting, fast-changing and, until recently, conflicting policy areas of immigration and child safeguarding and the promotion of child welfare.<sup>12</sup> Immigration legislation and policy are non-devolved matters and are therefore subject to UK legislation. The UKBA will thus use a local authority age assessment to determine whether an individual's asylum claim should be processed under child or adult procedures.

The Welsh Government, local authorities, and public bodies in Wales are meanwhile charged with the provision of the majority of services to asylum seeking and refugee children, which they are committed to delivering in-line with their commitments under the UNCRC. Local authorities in Wales use age assessments to decide whether a young person is under the age of 18 and therefore eligible to the provision of welfare under the Children Acts 1989 and 2004. This section sets out the legal, policy and procedural context for making age assessments and describes notable developments in policy and practice in the UK and Wales.

### The UK Context

#### United Nations Convention on the Rights of the Child (UNCRC)

In 1989 the UK ratified the UNCRC which sets out the rights of children defined as anyone under 18 years of age. Until 2008 however, the UK maintained a general reservation to Article 22 of the Convention effectively excluding children subject to immigration control from the rights enshrined in the UNCRC. The reservation had resulted in an increasing gulf between the rights of children seeking asylum as expressed in the UNCRC and the reality of immigration policy and practice. The lifting of the reservation in 2008 means that the UK Government must now ensure that “asylum seeking children, unaccompanied or accompanied, receive

appropriate protection and humanitarian assistance in the enjoyment of all the rights under the UNCRC and shall be afforded the same protection as any other child permanently or temporarily deprived of his or her family environment” (article 22).

This move demonstrates the UK's obligation to ensure that children's rights should never be superseded by asylum and immigration policies and that the treatment of children subject to immigration control must adhere to the standards set out in the UNCRC. The Guiding Principles of the UNCRC set out that that all of the rights in the convention apply to all children without discrimination on any grounds (article 2); that in all decisions affecting children, their best interests must be the main consideration (article 3); that all children have the right to life, optimum survival, and development (article 6); and that all children capable of expressing a view have the right to express that view freely and to have it taken seriously in accordance with their age and maturity (article 12). Other articles of relevance to age assessment are articles 8, 13 and 17, which guarantee the right to an identity (of which age is an important component), the right to freedom of expression and the right to access information from various diverse sources.

#### Best interests of the child and the benefit of the doubt

Article 3 of the UNCRC sets out the overriding principle of the ‘best interests’ of the child and places a positive obligation on states party that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” When applied to the age assessment process, this means that the principle of best interests must be a primary consideration with regard to all decisions on age and must be mainstreamed into the procedural operations at every stage of the process. It follows, that where there is any element of doubt that the individual may be a child, they must be protected.

<sup>12</sup> There have been nine major pieces of immigration legislation passed since 1997.

The UN Committee on the Rights of the Child, which influentially interprets the UNCRC for states, has set out guidelines for the treatment of separated children at all stages of the asylum process according to the ‘best interests’ principle. General Comment 6 (2005: para 31) provides guidance for State parties on the treatment of separated children and provides a clear outline on how age assessments should be conducted. It notes:

Age assessments should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.

The Committee has also made clear that States parties must take positive steps to ensure that age assessments are as efficient, timely, accurate and safe as possible and that where a margin of error does prevail in borderline cases, the benefit of the doubt is automatically applied (EXCOM Conclusion 2007 cited in Mougne and Grey 2011: 4). The Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) which interprets the UN Refugee Convention, has repeated these calls and has stressed that State parties must “ensure that age assessments are only carried out in cases when a child’s age is in doubt” (2007).

## Participation

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The UNCRC recognises that children have a right to speak, be heard, and contribute to their own protection. Reports on abuse in Wales have found that where the voices of abused and neglected children have gone unheard, or have been subject to institutional indifference that they have been unable to protect themselves.<sup>13</sup> The right to participation outlined in article 12 guarantees that young people undergoing age assessments have the right to express their views, such as their stated age, freely since this is a matter, which crucially affects the child. The Welsh Government must therefore ensure that separated children are provided the opportunity to be heard, either directly or through a representative. With regard to the age assessment process, this requires young people to have an independent advocate who can support the young person as they go through the complex age assessment process.

Furthermore, to ensure that children have an informed voice with which they can participate, separated children have a right to information concerning their case (article 17). Local authorities in Wales and the UKBA have a duty to ensure that young people undergoing age-assessments are kept informed in a meaningful and effective way concerning their case and how it affects them.

## Council of Europe Convention on Action against Trafficking in Human Beings (2005)

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The treatment of young people of uncertain age also falls under trafficking legislation. In December 2008, the UK Government ratified the Convention on Action against Trafficking in Human Beings which sets down that “when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending

13 See for example Department of Health (2000) *Lost in Care: report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974*.

verification of his/her age” (10.3). It lays out that as soon as an unaccompanied (separated) child is identified as a victim of trafficking, the State shall “provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child” (10.4).

### **Incorporating the UNCRC into UK Immigration Legislation: Section 55 of the Borders, Citizenship and Immigration Act (2009)**

The UKBA has incorporated its new duties arising from the removal of the reservation to the UNCRC into section 55 of the Borders, Citizenship and Immigration Act. Section 55 places a statutory duty on the UKBA to make arrangements to safeguard and promote the welfare of children in discharging its immigration, nationality and general customs functions.<sup>14</sup> It states that every child matters, even if they are someone subject to immigration control; acknowledges the UNCRC ‘best interests’ principle as a primary consideration when making decisions that affect children; notes that children should be consulted and have their wishes taken into account wherever practicable; and have their applications dealt with in a “timely way that minimizes the uncertainty that they may experience” (2.7).

Section 55 lays out that UKBA staff must ensure good treatment of children throughout the immigration process, apply laws and policies that prevent the exploitation of children, identify children who may be at risk of harm, and make timely and appropriate referrals to agencies that provide ongoing care and support to children (2.4, 2.5). It states that throughout the asylum process, UKBA staff are required to respond to children in a way “that communicates respect, takes into account their needs, and their responsibilities to safeguard and promote their welfare” (2.8).

Section 55 also stipulates that UKBA staff must take “special care” when dealing with unaccompanied

children seeking asylum, “for instance by checking with them that they understand the process for making and resolving the asylum claim, and ensuring that the physical settings in which their applications are dealt with are as child-friendly as possible to ensure the child feels safe and protected.” It notes that unaccompanied or separated children must be detained only in the most exceptional circumstances (2.19).

Section 55 also makes clear the lines of accountability concerning the safeguarding of children, setting out that senior managers throughout the UKBA remain directly responsible for monitoring the actions of their staff to safeguard and promote the welfare of children (2.10). It also confirms the position of Children’s Champion, a senior staff position responsible for promoting the duty to safeguard and promote the welfare of children throughout the UKBA (2.9).

### **Guidance on Assessing Age (2010)**

Guidance on Assessing Age is the most recent UKBA policy for immigration officers making an initial age assessment at the screening stage. It notes that upon encountering “asylum applicants who claim to be children” who “do not have any satisfactory documentary or other evidence to support their claimed age” “a careful assessment will need to be made of the person’s age” which includes all available sources of information since no single assessment technique, or combination of techniques, is likely to determine the person’s age with precision” (2.1). Once such an assessment is completed, a decision can be made about the person’s age but until that point, cases in the doubtful category should continue to be given the benefit of the doubt and be treated as [if] they were children (ibid).

At present, where “there is little or no evidence to support a person’s claimed age,” immigration officers who come into contact with young people seeking asylum at the screening stage must make a preliminary determination based upon the following criteria (2.2):

<sup>14</sup> Section 55 is intended to bring immigration officials in line section 11 of the Children Act 2004 (in Wales the section 28 duty) which places a similar duty on other public organizations but from which the UKBA had previously been exempt.

- The claimant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age (hereafter referred to as the “strongly suggests” criteria). These applicants fall within the adult asylum process.
- All other cases should be processed in the first instance as though the applicant were a child, in accordance with the Asylum Process Guidance - Special Cases ‘Processing Asylum Applications from a Child’ (UKBA 2010a). This does not indicate final acceptance of the claimed age, which will be considered in the round when all the evidence is collected, including the view of the local authority to whom unaccompanied children, or claimants who are to be temporarily treated as unaccompanied children, should be referred. The claimant should be informed that the local authority will generally make an assessment of their age and communicate the result to UKBA, at which time a final decision will be made about their age.<sup>15</sup> Doubtful age cases should receive a BP7 form setting out the reasons why the person’s claimed age cannot at this stage be accepted (7.2). They must also be served with an IS.97M form and receive an explanation of its contents.<sup>16</sup>

Applicants considered adults under the “strongly suggests” criteria are subject to being dispersed if they are placed into the asylum support system (8.1). Where the applicant contests a UKBA determination of adult status, the officer will inform them verbally of their right to approach a

local authority for assessment (IND & ADSS 2005: 9d). UKBA must refer all age-disputed cases to the Refugee Council’s Children’s Panel of Advisers (ibid: 9f).

Applicants who fall into the doubtful category should not be dispersed but routed to an asylum case-owner who has been trained to interview children seeking children (UKBA 2010b: 8.1). They should be referred to the relevant local authority for an age assessment (ibid: 3.1).

<sup>15</sup> Where on-site social workers are available UKBA Guidance states that these conversations should be held in the presence of a social worker, with close liaison to ensure that procedures are carried out in accordance with the best interests of the child.

<sup>16</sup> UKBA maintains that this guidance is consistent with their section 55 duty because these arrangements act as a safeguard by allowing for the possibility that the person may subsequently produce evidence showing that they are a child or there may be a local authority age assessment undertaken according to Merton guidelines assessing them to be a child. UKBA note that these arrangements ensure compliance with the new statutory duty by ensuring that the agency does not expose the applicants concerned to various risks which might compromise their safety or welfare - they are provided with a responsible adult, they are not accommodated with adults and they are not normally detained (2.3).

## The Welsh Context

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The Welsh approach to children's welfare is founded upon the concept of children as rights holders. Successive governments have committed to the protection, participation, and provision principles contained within the UNCRC. However, despite this commitment as the findings section of this report indicates in practice, separated children and young people undergoing the age dispute process in Wales continue to experience treatment which is leaving them unprotected and in limbo with serious protection consequences.

As it enters its fourth term, the Welsh Government (2011 – 2015) has a duty to ensure that UNCRC-derived principles located in the Children and Young People's Rights (UNCRC) Measure (2011) underpin child policy for all children in Wales, regardless of their immigration status. It is therefore essential that the new Welsh Government continues to fully exercise its devolved child-safeguarding powers to ensure that the best interests of separated children are embedded throughout the age assessment process in Wales.

## Advocacy services for separated children in Wales

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The Model for Delivering Advocacy Services for Children and Young People (WAG 2009a) is a commissioning framework based on the statutory entitlements of 'vulnerable children and young people' who are defined as 'children in need,' 'children on the periphery of care, and children who have left care.' While separated children are recognised as some of the most vulnerable children in Wales, age-disputed young people who continue to be treated as adult asylum seekers fall outside of the statutory definition of vulnerable young people. This results in barriers to their accessing local authority independent advocacy and therefore to their UNCRC rights.

The WRC Children's Advocacy Officer is currently the only specialist advocate for separated children and

young people undergoing age disputes in Wales.<sup>17</sup> Advocacy providers like Tros Gynnal provide advocacy services to separated children initially assessed as children, but later re-assessed as over 18, who wish to challenge that assessment.

## Unaccompanied Asylum Seeking Children (UASC) Practitioners Group

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The establishment of the Unaccompanied Asylum Seeking Children (UASC) Practitioners Group has also been an important development concerning policy and practice with separated children in Wales. The group is facilitated by the WSMP, but has in the past been facilitated by 'Save the Children', and 'Children in Wales'. They arrange quarterly meetings between practitioners on issues pertinent to the care of separated children, host guest speakers on a range of issues including developments in case law, child trafficking, and age assessment, and feeds issues into the All Wales Children's Asylum Policy Group.<sup>18</sup>

<sup>17</sup> In order to support the Welsh Government's aim of building the knowledge of advocacy provides across Wales, WRC has agreed to provide one-off basic advocacy training to all advocacy providers in Wales working with separated children. However, given the complexities of age assessment and the asylum process, it is envisaged that WRC will continue to provide expert knowledge to advocacy practitioners based on the frontline experience of the WRC Children's Advocacy Officer.

<sup>18</sup> Following the initial work of Save the Children Foundation a practitioners group was established in 2000 which was run by Children in Wales from 2003 to 2007 and since then by WSMP.

## **The Age Assessment of Separated Children in Wales**

### **Safeguarding Children: Working Together under the Children Act 2004 (2006)**

Local authorities in Wales tasked with making age assessments are guided by Safeguarding Children, Welsh Government's guide on the implementation of the Children Act 2004. The guidance highlights the importance of ensuring that all young people who may be children must be protected and sets out that safeguarding principles apply to all children including children who are refugees or seeking asylum in Wales. The guidance states that children seeking asylum should be provided with the same quality of individual assessment and related services as any other children presenting as being 'in need.'

### **All Wales Child Protection Procedures (AWCPP)(2008)**

Local authorities carrying out age assessments in Wales follow the AWCPP in conjunction with the 'Framework for the Assessment of Children in Need and their Families.' The AWPPC state that local authorities should complete an initial assessment regarding child protection referrals within 2 working days, followed by a full assessment within 35 working days.

An initial assessment takes place when a young person has referred themselves or been referred to a local authority. It is a brief assessment by social workers which, where age is uncertain, will include a preliminary age assessment. The initial assessment decides whether the young person is offered accommodation under the Children Act 1989, whether the young person's age continues to be disputed and whether further investigation and a full age assessment is required.

While age-disputed young people are generally referred to local authorities as a potential 'child in need,' child protection and safeguarding risks should always form part of an initial assessment. Social workers carrying out age assessments must therefore assess and evaluate risks of trafficking, exploitation, and/or disappearance. Under article 10 of the European Trafficking Convention (2005) where age-disputed children are suspected victims of trafficking they must be given the benefit of the doubt and receive support and accommodation from Social services. Where child protection concerns are stated in the referral of an age-disputed minor, an initial and 'full' assessment is recommended. All referrals should be responded to within 24 hours and the child seen within 2 days. The findings of the assessment(s) should then be sent to the UKBA case owner.

### **All Wales Protocols and Guidance for Safeguarding Children**

Where relevant, social workers should also refer to All Wales Protocols and Guidance for Safeguarding Children, which form Part 5 of the AWCPP.<sup>19</sup> 'Safeguarding Children Who May Have Been Trafficked' sets out the need for practitioners to identify potential trafficking victims and multi-agency procedures to safeguard children.<sup>20</sup>

The draft All Wales Protocol on Unaccompanied Asylum Seeking and Refugee Children is expected to form part of the All Wales Protocols by Summer 2011. It aims to redress the gap in child protection procedures concerning separated children, including those who are age-disputed. The draft protocol identified that due to the lack of guidance on age assessment it will be necessary to develop an All Wales Age Assessment

<sup>19</sup> These are the All Wales Child Protection Procedures (2008) produced on behalf of All Local Safeguarding Children's Boards in Wales. More recently, protocols on Safeguarding and promoting the welfare of children who are risk of abuse through sexual exploitation, Female Genital Mutilation, Safeguarding children who may have been trafficked (2008) and Children missing from care procedures have been added to these. The draft Unaccompanied Asylum Seeking Children (UASC) protocol will also form part of the protocols.

<sup>20</sup> The updated version of this guidance will be available in Summer 2011. As above, this is currently being updated to raise awareness on the National Referral Mechanism (NRM) and the roles of different agencies working with children who may have been trafficked.

Toolkit. There is a need for any such guidelines to provide explicit, step-by-step guidance based on the UNCRC principle of the best interests of the child.

### Practice guidelines for age assessment of young unaccompanied asylum-seekers

There is currently no statutory procedure or guidance issued to local authorities on how to conduct a full age assessment. In general in Wales, local authority full age assessments follow the 'Practice guidelines for age assessment of young unaccompanied asylum-seekers' developed by the London Borough of Hillingdon and known as the 'Hillingdon Guidelines' (2003) approved by the *Merton* judgement (see case law box below). Most Welsh local authorities also use and adapt the attached proforma to record information, weighting of evidence and the age assessment decision.

The guidelines recommend that two assessing workers are involved in the assessment process and that it should take place over a period of time and involve other professionals, such as residential social work staff, teachers, and other young people where appropriate. They highlight that the young person must understand the role of the assessing worker and comprehend the interpreter. They encourage the use of open-ended, non-leading questions and flexibility in the way the form is utilised.

The proforma attached to the Hillingdon Guidelines, provides space for information to be collected about an asylum applicant's physical appearance and demeanour, manner of interaction with the assessing social worker, social history and family composition, developmental considerations (such as information about the types of activities that the person was involved in before arriving in the UK), education, his or her level of independence and self-care, health and medical assessment, information from documentation and other sources and, finally, the conclusion of the assessment.

In lieu of statutory guidance, case law developments provide guidance to local authorities in England and Wales on what is required for a fair and lawful assessment. The following cases are some of the most important recent judgements that have set out the meaning of lawfulness in making an age assessment.

### Case Law - Age Assessments

Until 2009, the leading case on age assessments was that of *R (B) v Merton*<sup>21</sup> in which Burnton, J set down broad guidelines concerning how age assessments ought to be undertaken in respect to a separated child who arrives in the UK without documentary evidence to prove their age. The *Merton* judgement approved the 'Hillingdon Guidelines' in the High Court in July 2003. These guidelines form the basis of the term 'Merton compliant age assessment' and, together with subsequent case law form the basis on which local authority age assessments are judged to be lawful. *Merton* confirmed that the local authority 'cannot simply adopt a decision made by the Home Office' (para 39) and outlined the following points:

- The assessment of age in borderline cases is a difficult matter, but it is not complex and can be determined informally, provided that safeguards of minimum standards of inquiry and of fairness are adhered to (para36);
- An assessment cannot be made solely on the basis of appearance, and should be a holistic one taking account of the young person's appearance, demeanour, activities during the previous few years, background, and credibility. If there is a reason to doubt the applicant's statement as to his or her age, the decision maker will have to make an assessment of the applicant's credibility, and will have to ask questions designed to test credibility (para 37);
- The local authority must make an assessment on the material available to and obtained by it. There should be no predisposition, divorced from the information and evidence available to the local authority, to

21 *R & B v London Borough of Merton* [2003] EWHC 1689 (Admin)[2003] 4 All ER 280.

assume that the applicant is an adult, or conversely that he or she is a child (para 38);

- A local authority is obliged to give adequate reasons for its decision that an applicant claiming to be a child is not a child. The applicant is entitled to know the basis for the decision and to consider, with legal assistance if available, whether the decision is a lawful one (para 45);
- It is not necessary to obtain medical evidence (para 51);
- Where an interpreter is required, he or she should ideally be present during the interview. Great care is required that mistakes are not made. A note of the questions and answers by the interpreter would be highly relevant to any assertion that the applicant had been misunderstood or that what he said was not correctly noted (para 52);
- The decision maker must explain to an applicant the purpose of the interview (para 55);
- Procedural fairness requires the assessing officers to put to the child matters which they are minded to hold against him or her, so that there is an opportunity to rectify any misunderstanding (para 55).

In the recent case of *FZ*<sup>22</sup> the Court of Appeal laid down additional guidelines on the fairness required in the local authority's assessment of a child. It sets out that:

- A local authority is obliged to give the person whose age they are assessing an opportunity to respond to provisional adverse findings which they are inclined to make (para 21);
- A young person should have the opportunity to have an appropriate adult present at any age assessment interview not least because he claims to be a child and he is vulnerable (para 23 – 25).

Case law has also developed concerning who is the final arbiter of age assessments. The Asylum and Immigration Tribunal (now the First Tier Tribunal (Immigration and Asylum)) may also make decisions on a young person's age as part of an asylum appeal. These cases have established that a local authority is not bound by the tribunal's finding on age. In appropriate cases it is for the local authority to reassess the age of the applicant and "give due respect to the basis and reasoning of the tribunal's finding whilst taking into account any new evidence (including evidence before the tribunal that was not previously before them), and give due respect as to the basis and reasoning of the tribunal's finding, whilst taking account of the fact that they may have different evidence available to them" (para 88).<sup>23</sup>

### Opinions of other professionals

The case of *Enfield*<sup>24</sup> demonstrated that local authorities must conduct a fair and unbiased assessment and take into account the views of other professionals such as doctors working with the applicant. The views of other significant individuals such as foster carers, teachers, and social workers are also considered relevant.

Medical and paediatric reports may also be used to assess the physical and mental development of age-disputed asylum seekers and have been used to challenge local authority assessments.<sup>25</sup> Due to the expertise of those drafting them, it is considered that medical reports will usually contain relevant material and must therefore be considered by the local authority.

<sup>26</sup>

In 2009, Collins J, found in a high court decision that while local authorities should take such reports into account, medical reports do not "attract any greater weight than the observation of an experienced social

<sup>23</sup> *R(PM) v Herfordshire County Council* [2010] EWHC 2056.

<sup>24</sup> *R (on the application of C) v London Borough of Enfield* [2004] EWHC 2297 (Admin).

<sup>25</sup> For example *R (on the application of A) v SSHD*, [2004] and *R (I & O) v SSHD* [2005] EWHC 1025 (Admin).

<sup>26</sup> *R (I & O) v SSHD* [2005] EWHC 1025 (Admin).

worker.”<sup>27</sup> However, this is provided that the social work assessment considered the medical evidence, was conducted over a longer period of time and that the relevant social workers are suitably trained and experienced in the conduct of the assessment of age and analysis of data.

The Collins judgement was superseded by the Supreme Court in the case of *A & M*<sup>28</sup> in which Lady Hale ruled that the question of age is a finding of fact and therefore a matter for the courts to decide.

### Challenging an age assessment

In cases where an age assessment has been carried out and the individual does not agree with the outcome of the assessment they may challenge the assessment, but only if the process by which the interview was conducted and the procedural safeguards in place did not adhere to the standards established in case law. Until 2009, it was only possible to challenge a local authority’s decision on age through judicial review and if it was found that, the assessment had not been conducted properly - in light of the relevant case law - they would have to carry out another assessment. However, the Supreme Court in the case of *A & M*<sup>29</sup> found that in the event of a challenge by judicial review it is for the court itself to determine whether the person is a child and how old he or she is.

This judgement outlined that local authority social workers should continue to make *Merton* compliant age assessments in the first instance. Indeed in these cases Lady Hale outlined that “the better the quality of initial decision making, the less likely it is that the court will come to any different decision upon the evidence”(para 33). However in the event of a disputed age assessment, it is now for the Administrative Court to review the correctness of the authority’s decision (para 35) and if necessary take the decision itself. It is important to note that *A & M* does not affect the ADSS Protocol (2005: 14) which states: “In the event that

new evidence has been brought forward the host LA should continue to reassess the age of the applicant taking full account of all sources of information.”

In *FZ*<sup>30</sup> the Court of Appeal set out the correct approach at the permission stage of an age dispute judicial review claim. It stated that the Administrative Court should ask whether the material before it raises a factual case which, taken at its highest, could not properly succeed in a contested factual hearing. If so, permission should be refused. If not, permission should normally be granted, subject to other discretionary factors, such as delay (para 9). It also stated that the burden of proof does not feature at the permission stage (para 7); that there should be no starting presumption by the reviewing court that the local authority’s decision was correct (paras 6 & 27); and that questions of general credibility are not sufficient for the court to refuse a factual hearing (para 29).

### Decisions on Age Assessments

It is UKBA policy to rely “heavily on local authority age assessments which follow the guidelines set out in the *Merton* judgement before finding applicants of doubtful age to be adults” (UKBA 2010b: 2.3). UKBA’s Guidance on Assessing Age, notes that in many cases, the local authority’s assessment will normally be accepted as the decisive evidence of the person’s age. Where findings are unclear, do not seem to be supported by evidence, or if it appears that the person has not been given the benefit of the doubt or that the principles of the *Merton* case have not been adhered to, case owners must carefully consider the findings (ibid: 6.1). The UKBA also notes that account may be taken of the overall credibility of the claimant, established for example through the asylum interview, though care should be taken in doing so.

In addition to a social services assessment of age, certain documentation is considered as sufficient proof of age. These documents are an original or genuine passport, a travel document or national identify card (5.1). Immigration officers are required to exercise caution when accepting birth certificates because

<sup>27</sup> *A v L.B. Croydon and WK v SSHD and Kent* [2009] 939 (Admin).

<sup>28</sup> *R(on the application of A) v London Borough of Croydon: R (on the application of M) v London Borough of Lambeth* [2009]

<sup>29</sup> *R(on the application of A) v London Borough of Croydon: R (on the application of M) v London Borough of Lambeth* [2009] EWCA Civ 1445.

<sup>30</sup> *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59.

these may not have been legitimately issued or obtained (5.2). It also states that evidence based on a Eurodac<sup>31</sup> hit or other biometric evidence does not in itself amount to conclusive evidence of age. It notes that paediatric reports must be carefully considered alongside any other evidence but cautions against any such reports which purport to give an assessment of age within a narrower margin than five years (5.5). It stresses that similar care must be considered with dental reports and x-rays (5.6).

Where the UKBA has concluded separately to the local authority that the applicant is an adult or a child, (i.e. based on documentary evidence assessed by UKBA). The UKBA must relay such evidence to the local authority to review the case (4.3). Where this is based on documentary evidence from the country of origin, it is UKBA policy for case owners to make their own enquiries about the authenticity of the documentation and relay the findings back to the social worker (4.4).

**Age Assessment joint working protocol between the (IND) Immigration and Nationality Directorate of the Home Office (now known as the UK Border Agency) and the Association of Directors of Social services (ADSS) (2005) (ADSS Protocol)**

The ADSS Protocol sets out arrangements between the agencies to support a co-operative approach to age assessment. The protocol highlights the need for UKBA and local authorities to communicate disputes and decisions at the earliest possible opportunity because delay in notifying changes of status can be prejudicial to the welfare of the applicant and can lead to incorrect decisions and/or loss of support.

<sup>31</sup> Eurodac is an EU database which makes it possible to compare children's fingerprints against those in the central database to determine whether the individual has previously lodged an asylum application in another Member State.

The protocol notes that where a dispute arises between UKBA and SSD over the accepted age of a young person, the UKBA should first discuss the issue with the local authority. If no consensus can be reached the case will be referred to the Asylum Policy Unit (APU) and a formal reconciliation attempted within 7 working days. If this fails the matter will be referred for binding adjudication by a nominated third party.

**Information Sharing between UKBA and SSD**

UKBA guidelines advise case owners to request a full copy of the local authority's age assessment and confirmation that it is *Merton* compliant or "at the very least" their assessment conclusion, the reasons on which their conclusion is based, and an assurance that their assessment is *Merton* compliant (4.5).

There is no legal requirement to provide UKBA with a full *Merton* compliant age assessment' (Action on Rights for Children 2009). Those local authorities that do supply a full age assessment may be doing so in breach of Data Protection Legislation (Matthews 2009: 6). This legislation requires that informed consent must be gained to share the report from a person who has information on how that information might be used by the party to whom it is disclosed. UK Government guidance on information sharing notes, "consent must be 'informed.'" This means that the person giving consent needs to understand why information needs to be shared, what will be shared, who will see their information, the purpose to which it will be put and the implications of sharing that information.<sup>32</sup>

The ADSS Protocol stipulates that the findings of the assessment can be summarized "without being over inclusive of information obtained in the assessment process, and collected for other purposes" (2005: 8). Any information sharing should fall within the code of ethics that underpins social work practice and regulation. The summary of evidence to UKBA should therefore include:

- An outline of the age assessment process – where

<sup>32</sup> See HM Government (2008) Information Sharing: Guidance for Practitioners and Managers para 3.18.

it was conducted, who was present (ie interpreter in person, whether the person assessed was informed of the reason for assessment);

- Whether other sources of data were considered (ie. documentation, medical reports, the opinions of other professionals such as teachers, carers and foster parents);
- A summary of the social workers analysis and weight given to conflicting information;
- How the decision was communicated to the child/ young person.

The ADSS Protocol also sets out policy for conflicting local authority assessments. It notes that young people seeking asylum may move across local authorities and may therefore seek age assessment from more than one local authority. This is particularly relevant in Wales, where young people who dispute their age assessment are routinely dispersed from one local authority to another. It notes that to reduce duplication of assessment, a local authority should check whether any previous assessment has been carried out by another local authority and request a copy of the age assessment from the original local authority.

In the event that no new evidence is brought forward that was not considered at the original assessment, the issue should be treated as a complaint about the original assessment and referred to the local authority responsible for it (13b).

In the event that new evidence has been brought forward the host local authority should continue to reassess the age of the applicant taking full account of all sources of information (ibid).

## Outcomes of Age Assessments – Welfare

### Assessed as a child

If a claimant is assessed as under the age of 18, they are the responsibility of the local authority in whose geographical area they seek help. Support should be provided through section 20 of the Children Act 1989 and the Children (Leaving Care) Act 2000, which requires local authorities to meet the full welfare provisions of a child in need and provided with leaving care services when they are deemed ready to leave care, which will usually not be until they are 18.<sup>33</sup>

The Hillingdon<sup>34</sup> Judgement of 2003 established that the accommodation and support needs of unaccompanied children, particularly the 16+ age group, should not be met through section 17 of the Children Act but through section 20 provision. Services for separated children should be based on a full assessment of their individual care needs and never on assumptions of what their needs are as a group.<sup>35</sup> Separated children have particular needs that should be identified in each child's assessment of need and may require specialist support that should be addressed in each child's care plan and placement. Guidance set out by the Department of Health (2003) and the National Assembly for Wales (2005) establishes that support to unaccompanied children should be based on the same assessment procedures as citizen children as laid out in the "Framework for the Assessment of Children in Need and their Families" on the basis that:

- There being no person who has parental responsibility for him;
- His being lost or having been abandoned;
- The person who has been caring for him being prevented (whether or not permanently, and for whatever reasons) for providing him with suitable accommodation or care.

<sup>33</sup> Further guidance for local authorities in Wales is found in the National Assembly For Wales (2005) Circular 23. Available from: <http://wales.gov.uk/pubs/circulars/2005/english/NAFWC23-05-e.pdf?lang=en>

<sup>34</sup> *Berhe & Ors, R (on the application of) v Hillingdon & Anor, Court of Appeal - Administrative Court, [2003] EWHC 2075 (Admin).*

<sup>35</sup> In the experience of WRC some local authorities have provided accommodation under section 17, justifying that this is better for independent young people..

A local authority must also fulfil the parental obligation under section 7 of the Education Act 1996 to ensure a child is educated, that duty being enforced by article 2 of the European Convention on Human Rights. The Placement of Children (Wales) Regulations 2007 and Towards a Stable Life and a Brighter Future Guidance (2007) state that it is essential that a Looked After Child (LAC) is placed in school as quickly as possible (4).<sup>36</sup>

### **Welfare for young people assessed as over 18 years**

Where a local authority decides that a young person claiming to be a child is over 18, they will not house or support the young person and he or she will be referred to the UKBA for support as an adult. The UKBA will not house people as adults whose papers say that they are under 18 unless they also have written notification from the local authority to say that they have been assessed as being over 18 (CLC 2009: 26).

Under the Immigration and Asylum Act 1999, young asylum seekers who are disputing the assessment of UKBA and the local authorities may be allocated accommodation in dispersal areas around the UK. Wales is part of the South West dispersal area. Asylum seekers considered adults are first routed to an Initial Accommodation (IA) Unit in Cardiff. This is temporary accommodation (up to a maximum of 28 days) and they are then by dispersed from here to adult accommodation in the South West dispersal areas of Cardiff, Newport, Wrexham, Swansea and Plymouth.

Asylum seekers assessed as over 18 are accommodated with other adults under UKBA's 'no choice' policy, where they frequently share a room with other adults from different cultures about whom nothing is known. There are no screening procedures in place concerning who is accommodated together.

Young people disputing an age assessment cannot access the education rights and entitlements of children. Due to disputes over their age and asylum status, they are not provided with a place in a school. In Wales, age-disputed children can attend English language classes and programmes which are run specifically for young people seeking asylum by organisations such as Displaced People in Action (DPIA).

### **Implications of Age Assessments for Processing the Asylum Claim**

#### **Assessed as a child**

Children in the UK asylum process are entitled to considerable legal protections which adults are not. They should not be subject to detention, save in exceptional circumstances and then only overnight. A separated child will usually be granted Discretionary Leave to Remain (DLR) in the UK until the age of seventeen and a half, or for three years, (whichever is sooner), unless there are 'safe and adequate reception arrangements' in their country of origin.<sup>37</sup>

Children in the asylum system are entitled to a child-appropriate asylum determination procedure, have the right to be legally represented and accompanied to interviews and will have their claim assessed by a specialist children's case owner. UKBA's Processing asylum applications from a child (2010a) states that an asylum application made by, or on behalf, of a child should be handled sensitively at all stages by caseworkers who are trained in interviewing children. Asylum interviews with children must be conducted with an appropriate adult present in an informal, non-adversarial, child-friendly setting. The child should be made to feel at ease and the case owner should explain the process clearly to the child, using child-sensitive language and child-appropriate techniques.

<sup>36</sup> Ethnic minority achievement education teams operating within local authorities can also provide assistance and expertise to social workers concerning the education of asylum seeking and refugee children in Wales.

<sup>37</sup> At the time of writing, the definition of 'safe and adequate reception arrangements' is unclear. The UKBA's proposed returns of Afghan separated children over the age of 16 to reception centres in Kabul may change this arrangement.

## Credibility

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Due to the difficulties in substantiating a claim for protection, asylum law adopts a lower standard of proof and the applicant's overall credibility or trustworthiness is seen as a means on which to base a decision to grant protective status. Where an applicant is seen as unreliable, for example through the failure to produce a passport or answer a question upon request, the credibility of the applicant's asylum claim is seen as compromised (Kvittigen 2010). The credibility of a claim for protection and the general credibility of an applicant are therefore strongly connected in decision making. In the UK, asylum determination relies "heavily on the assessments of credibility of applicants" and it has been found that a large proportion of denials of refugee status in the UK are based on adverse credibility findings (Drudy 2006: 88).

## Age disputed

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Where UKBA categorise an individual as age-disputed during the initial screening, UKBA guidance states "where the person's age is in doubt he/she should be treated as a child unless and until a full age assessment shows him to be an adult." (UKBA 2007: 4). In assessing the credibility of a child's asylum claim, a UKBA case owner must not draw an adverse credibility inference from omissions in the child's knowledge or account if it is likely that their age or maturity is a factor or if there are logical or other reasons for those omissions (UKBA 2007:16.4). The guidance on children further states, that the benefit of the doubt will be to be applied more generously when dealing with a child, particularly where a child is unable to provide detail on a particular element of their claim (ibid).

Until a lawful *Merton* compliant age assessment is completed, the applicant is therefore safeguarded by the child asylum process. Thus, at this point, UKBA policy sets out that age-disputed young people should be provided with a responsible adult such as a social

worker, Local authority key worker, or foster carer.<sup>38</sup> They should not be accommodated with adults.

For age-disputed young people, the asylum process "should not normally be delayed while the issue of age is being resolved" (UKBA 2010a: 2.1). Where case owners are ready to make an asylum decision during an age dispute, the asylum decision will take place but the applicant will not be eligible for consideration under the Discretionary Leave policy, the consideration of which will only take place once the local authority's findings on age are known (ibid).

## Assessed as an adult

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Where UKBA has found at the initial screening that an individual's appearance strongly suggests that they are significantly over 18, they will treat their asylum claim as an adult regardless of whether they dispute this assessment. This is also the case for children who are not formally age assessed or are incorrectly assessed by social services as being over 18 years of age. These applicants are not subject to any of the safeguards put in place for the UKBA category of 'age-disputed.' This means they will not be given a child-appropriate asylum interview or public funding to have a lawyer present; neither will they benefit from the presence of a responsible adult at the asylum interview.

Age-disputed young people who are treated as an adult by UKBA are also subject to being detained in an immigration removal centre and may find themselves in the accelerated 'fast-track' asylum process (see case study of 'Michael' p 40). Fast-tracked asylum applicants are held in detention throughout the asylum process (including appeals). They may also be placed in the super-fast track procedure. Here they are interviewed the day after their arrival into the fast track process. A decision is then made by the UKBA the following day and the applicant given two days to appeal the decision.

<sup>38</sup> Other people/persons who are independent of the Secretary of State and have responsibility for the child could also assume this role, such as a doctor, priest, vicar, teacher, charity worker or Refugee Council representative.

# FINDINGS

The issue of age assessments for unaccompanied asylum seeking children is still one that causes concern for me.

Children's Commissioner for Wales, 2010

## I. Direct arrivals to Wales: Assessments and reassessments by UKBA and Local Authorities

Separated children in Wales who are subject to the process of age assessments and age disputes can be roughly understood as falling into two categories. The first are those who arrive directly, or are discovered in Wales (referred to here as "Direct Arrivals") and have their first age assessment carried out by a Welsh Authority. The second group comprises those young people who have arrived in England and been routed and dispersed to Wales, (referred to in this paper as "Dispersed").

While direct arrivals and dispersed groups face many of the same problems concerning age assessment and age dispute procedure, in Wales they also face distinct problems due to their different experiences of the age assessment and dispute procedure. Some of what is outlined in the first section concerning direct arrivals in Wales holds true for the dispersed group category, however additional problems concerning the dispersal system, further complicate the situation of this second group.

### Direct arrivals

No comprehensive statistics are kept on the number of age assessments which take place in Wales each year. One local authority host to larger numbers of separated children reported that 49 age assessments were carried out between January 2008 and October 2010 (FOIA Request 2010). In addition, in one Welsh local authority in 2010 four children had had their ages assessed by social services as under 18 but argued that they were younger than the age at which they had been assessed (Tros Gynnal 2011).

Separated children arrive in Wales through different routes. Social workers and children's advocacy workers interviewed gave examples of young people who had been found by immigration officers in the back of a lorry (Cardiff), dropped at service stations (Monmouthshire), coming off ferries at Welsh ports (Pembrokeshire) and found working on illegal cannabis farms (Swansea) who have subsequently had their ages assessed by Welsh social services.

Anecdotal evidence suggests that direct arrivals in Wales are usually identified by the police. A recent welcome policy development is that where there is suspicion of trafficking, regardless of the police officer's opinion on a child's age, it is now police policy to contact social services to conduct an age assessment.<sup>39</sup>

### Case study 2

#### Michael, 16

Michael travelled to the UK on a false passport from Sudan in October 2009. The age on his passport stated that he was 22. In his home country he had been subjected to torture and brutal assault. His brother - who had also been persecuted and had received refugee status in the UK - believed that the only way to get Michael to safety, without the authorities knowing was for him to leave on a false passport. Michael said, "I come in this country and I want to tell my true identity. I had to use a bad [false] passport because otherwise the authorities in Sudan would not let me go."

Upon claiming asylum, Michael was detained and sent to Croydon from where he was arrested and detained in a fast-track detention centre for one week. Upon first interviewing Michael, his solicitor realized he was under 18 and alerted the authorities at the detention centre

<sup>39</sup> Further assurances have been given by the Gwent Police Consultation Group on Human Trafficking that all age disputed children will be referred to social services for an age assessment (Gwent Police Human Trafficking Training 2011).

however no age assessment took place. Michael was then released and dispersed to the IA Unit, Wales. The WRC's Children's Advocacy Officer, who had been contacted by Michael's solicitor, referred him directly to a social services department in Wales who undertook an initial assessment which concluded he was an adult. In a letter to social services the Children's Advocacy Officer highlighted her concerns that the initial age assessment had relied too heavily on information gained from UKBA and that social services were unwilling to carry out a full assessment until they received further clarification from UKBA.

In a letter of response social services stated:

We have no expertise in determining which documents, either the passport and the visa or the new birth certificate are authentic. We would recommend to his legal representative that they should challenge the UKBA if they feel that his name and DOB [date of birth] are incorrect. Based on this conflicting information we will not be providing a service until we are made aware of the outcomes of any UKBA challenge regarding [Michael's] identity. If the UKBA find [Michael] to be a minor we would re-open the case and be willing to provide a service...<sup>40</sup>

The Children's Advocacy Officer responded: "I am concerned that the decision not to complete a full age assessment compromises the child's right to a full age assessment and disregards child protection and safeguarding procedures." She went on to say: "In my opinion 'Michael' is a vulnerable young person who is entitled to a full *Merton* compliant age assessment. In the initial assessment I cannot see anything that relates to Michael's demeanour, behaviour or responses that indicates that he is either a child or an adult. The conclusion seems to be based purely on information obtained from UKBA" (WRC Correspondence 26 March 2010).<sup>41</sup>

Following representation from the UKBA, the social services department agreed to carry out a full age assessment for Michael. This assessment consisted

of a more detailed assessment in which extensive evidence was collected from Michael concerning his background. Michael was accepted as 16 years and 5 months old. This full assessment recognized that his physical appearance indicated that he could be older than 18 but by relying on his demeanour and life story, he was assessed as being under 18.

For the two months that Michael's age was disputed he said he felt "so low" because he was not believed. When his age was finally accepted he says he was "so happy because they believe me." Michael now lives in shared accommodation with other separated children of his own age. "I have friends, I can discuss things with them."

### UKBA Initial Screening

UKBA's section 55 safeguarding duty to make arrangements to safeguard and promote the welfare of children in discharging its immigration, nationality and general customs functions is outlined at the beginning of all UKBA documents dealing with children. However children's advocates and legal practitioners interviewed for this research noted that other than the statement of this statutory duty it is unclear how the UKBA is implementing this duty to ensure that the best interests of the child remain the priority of immigration officers in discharging their immigration duties.

It is unclear how the UKBA are enforcing section 55 in their treatment of separated children.

*Children's advocate 3*

We have seen little improvement in UKBA's treatment of age-disputed young people over the past four years.

*Legal practitioner 2*

The process of UKBA officials, who are neither qualified social workers or child specialists, dividing individuals with no documentary evidence of age into children, adults, and the doubtful, purely on a child's physical appearance, has received criticism from advocates and has been known not to work in practice (ILPA 2010). In a report on the UK, the UN Special Rapporteur on

<sup>40</sup> Initial assessment report received by WRC 2 February 2010.

<sup>41</sup> WRC Correspondence 26 March 2010

the human rights of Migrants commented that the UKBA's instruction "relies excessively on subjective criteria, having as a consequence the possibility that minors could be considered as adults throughout the application process and detained on this basis." (2010: para. 56). Young people assessed by UKBA as adults under the "very strongly suggests" criteria have been later found to be children, including when documentary evidence such as original birth certificates were produced and accepted by the UKBA (ILPA 2010: 3).

Children's advocates and legal practitioners noted that for UKBA to fulfil its section 55 safeguarding duty, age assessments should not be carried out as a matter of general policy but only undertaken where there are legitimate doubts concerning the childhood of an applicant:

While it is acceptable that age assessments may be a necessary feature of dealing with some separated children, for UKBA to fulfil its safeguarding duty, the starting point of their treatment of a separated child must not be an automatic age assessment... If a child without documents says he's 13 and on initial view having observed him he seems 13, why assess him? Why make the child go through that full and quite intrusive process?

*Legal practitioner 4*

Legal experts have noted that too frequently UKBA will consider a child age-disputed where all the evidence points to the child being under 18 but where evidence other than the testimony of the child is also compatible with their being over 18. They insist these individuals should not be treated as 'age-disputed' but not as children (ILPA 2010). They note that UKBA rarely accept the testimony of the child concerning their age as evidence and highlight that the statement of the child is evidence of their age and must be accepted as such (ILPA 2010: 3).

The high numbers of children being automatically age-disputed has been explained as a failure of UKBA to follow its own policy of giving the benefit of the doubt in borderline cases at initial screenings (ILPA 2010; Crawley 2007; Bhabha and Finch 2007). The UN Special Rapporteur noted the "lack of recognition of the benefit of the doubt in age-disputed cases" (2010: para 65).

These children are not given the benefit of the doubt and are automatically entered into the prolonged age assessment process.

*Legal practitioner 3*

### **Local authority age assessments**

The process of local authority social services conducting age assessments has raised important questions within and outside of the agency about the role of social services in this process. Important issues which have emerged in other research include whether there is an irreconcilable tension in asking social workers to assess age and at the same time to provide support to their clients (Crawley 2007: 76).

There is also the concern that there is an inherent conflict of interest in having a local authority decide a young person's age in the current context of political and resource pressures on local authorities relating to the support of separated children (ibid 77).

Information gathered for this report indicated concerns about appropriateness and independence of local authority social workers to impartially conduct age assessments. Children's advocates noted the inherent difficulty that social workers face as "gatekeepers" to the resources of the local authority (Children's advocates 1, 3, 4; WRC staff 1, 2, 3; Legal practitioners 2, 4).

Social services have been turned into gatekeepers... You have a situation where the people who should be advocating for these young people's rights may be under pressure to not assess them as children.

*Children's Advocate 2*

It was noted that greater independence is needed between the decision maker determining the age of the young person and the authority with the ongoing duty to care for the child and their needs, particularly in the context of funding cuts to local authorities (Children's advocates 2,3,5).

### Guidance on Age Assessments in Wales

Social workers and voluntary sector organisations contacted for this report emphasised that knowledge of age assessment procedures in Wales has improved over the last number of years due to improved communications between stakeholders. Anecdotal evidence suggests this has increased knowledge concerning the *Merton* guidelines and ADSS joint protocol in more rural areas of Wales where social work practitioners were previously unfamiliar with issues relating to separated children and issues around age assessments.<sup>42</sup>

Despite the welcome increased knowledge of age assessment guidelines the Children's Commissioner for Wales has highlighted the need for clear guidance that would support social workers asked to carry out age assessments to ensure that the human rights of the children they are assessing are upheld fully (2010: 17). The social workers contacted in the course of this research reiterated these concerns and highlighted their anxiety at the lack of consistent guidance for conducting age assessments. Social workers contacted noted the difficulties involved in establishing a precise age for young people in the absence of clear guidance. One social worker noted that the whole process of age assessment is "not clear cut, it's very complex" (Social worker 1). The procedure was noted as presenting particular challenges to social workers who expressed concerns about making decisions about young people who may be at risk. Another social worker highlighted the ethical difficulties of making decisions on very insubstantial evidence.

When asked how this situation could be improved, social workers responded by asking for guidance and training:

Statutory guidance would be ideal.

*Social worker 3*

Some local authorities in Wales have produced their own best practice guidance relating to age assessment procedure. The Powys County Council Children's Services' Unaccompanied Asylum Seeking Children (2009) and the Monmouthshire County Council Draft Report on Unaccompanied Children (2010) provide guidance and lessons learned for age assessment in the Welsh context.

The drafting of the All Wales Protocol on Unaccompanied Asylum Seeking and Refugee Children is a welcome development in redressing the gap in child protection procedures and will further increase knowledge on best practice concerning separated children in Wales. The proposed All Wales Age Assessment Toolkit presents an excellent opportunity for the drafting of All Wales UNCRC-compliant guidance on age assessment. For guidance to be credible, fair and legal, it is essential that the best interests of the child are represented in a multi-agency negotiated document. The UKBA have made an in-principle agreement to be part of a multiagency working group working strategically to ensure the best interests of the child in age assessments in Wales. Children's advocates, however, have expressed concern that representatives capable of promoting the best interests of the child could be excluded from this process should it become an exclusively UKBA and local authority agreement. To ensure that guidance on age assessments fully complies with the UNCRC best interests of the child principle, it is essential that children's advocacy groups, capable of representing the best interests of the child, are included in the negotiations regarding an age assessment toolkit for Wales.

### Training

Social workers contacted for this report stated that there is currently no consistent training for social workers in Wales and reported that they had learned how to conduct age assessments 'on the job' and by conducting their own additional independent research (Social workers 1, 2, 3).<sup>43</sup>

<sup>42</sup> See Save the Children (2008) *Agenda for Action* for more details.

Prior to our first age assessments we had no training, no guidance. We would appreciate all of the guidance we can get on this.

*Social worker 2*

We need more training for practitioners, we got some training which was helpful but it hasn't been consistent.

*Social worker 1*

The lack of consistent training and guidance on age assessments raises serious concerns about the safeguarding of children. The age assessment process leads to critical decisions being made about children's access to welfare and protection services, it is therefore essential that decision making is consistent, fair and carried out by professionals trained for this purpose. The Children's Commissioner for Wales has noted that the development of a protocol would be a useful starting point but will "need to be supported by further training to support social workers in making these vital assessments" (ibid). He stressed that the need for training and support for social workers and other professionals on how to effectively safeguard these vulnerable children requires clear focus and that knowledge and training are vital among professionals to improve how these children are treated (ibid).

### **Securing an initial assessment**

Anyone claiming to be a child has the right to approach children's services for support. Even if the UKBA is treating someone as an adult, the local authority must make their own assessment of a young person's age for the purposes of deciding whether they then might be a child in need under part 3 of the Children Act 1989.

Stakeholders contacted for this research noted that most local authorities in Wales will agree to undertake an initial age assessment of a young person seeking asylum who claims to be a child. However a number of exceptions were noted, particularly, where UKBA had categorized the young person as an adult at the initial screening. One WRC member of staff noted:

If the client has been issued with an IS97 letter from UKBA which states 'Your physical appearance/demeanor very strongly suggests that you are significantly 18 years of age or over' they [social services] have tried to argue in the past that they do not need to assess.

*WRC staff 1*

### **Initial Assessments**

Discussions with social workers, WRC staff and advocates highlighted a number of key concerns around the timing, implications and location of initial age assessments. Practitioners interviewed highlighted their concerns that these assessments take place too soon after a child has arrived in the UK for them to form the reliable basis of a conclusive age assessment:

Often these initial assessments are carried out very soon after an unaccompanied person has arrived in the UK. Sometimes we have had clients who have been assessed hours after they've tumbled out of a lorry.

*WRC staff 2*

These people had been travelling for months throughout Europe and looked much older on first meeting them. After a week when they had been fed and slept, they looked younger.

*Social worker 2*

Initial assessments are too quick and too flippant. The child hasn't been given a chance to substantiate they're under 18 but this initial assessment is often a critical part of the final age assessment decision.

*Social worker 3*

<sup>43</sup> Certain discreet training initiatives on issues related to age assessment in Wales have existed for some time. For example Cardiff University and Welsh Medical School have, for several years, received awareness training on separated children from WRC which has recently been offered to all social work and health professional training courses in Wales (WRC 2011). A training module on issues affecting separated children, including age assessment, currently forms part of the social work curriculum at Swansea University. While important, this training cannot compensate for consistent training of all social workers on best-policy age assessment practice.

Children's advocates were also concerned about the implications of the initial assessment for the credibility of the child in the full age assessment and asylum proceedings. One children's advocate noted:

There is too much emphasis on what is said during the initial interview when children are often very frightened and confused. Any inconsistencies in the interviews that follow are often considered to militate against the credibility of the child rather than being understood in the context of trauma.

*Children's advocate 3*

Initial age assessments conducted by social workers often come at a time when the young person has been subject to numerous interviews by police and immigration officers. Practitioners noted that young people may assume that the age assessment is part of an immigration control procedure:

Often it's a duty social worker who will conduct the initial assessment. The child has just come in contact with the police and immigration and then will meet social workers who they will assume to be an immigration official since they are asking them so many questions about their background, age and family.

*WRC staff 3*

The young person's belief that assessing social workers are members of immigration enforcement may be strengthened by the location of initial assessments. Anecdotal evidence suggests that initial assessments in certain parts of Wales take place in a police station cell, especially where a child faces criminal charges:

This is clearly a deeply unsatisfactory arrangement in which to conduct an independent social services assessment of age.

*Children's advocate 2*

### Effects on Children: Not understanding the purpose of the age assessment process

Under *Merton*, the decision maker must explain to an applicant the purpose of the interview (para 55) and ensure that the young person understands what is taking place. If young people do not understand what the process entails they will not understand their right to appeal an assessment should they disagree with its outcome.

Children interviewed during this research highlighted that the experience of the age assessment procedure was very similar to the UKBA screening and asylum interview. Some of the children interviewed said that they did not understand the purpose of the age assessment. Others noted that they were unsure that an age assessment had even taken place:

"I thought it was another part of the immigration and police questions."

*Samuel, 16*

"I didn't know why they wanted to ask me so much about my age."

*Michael, 16*

"At the police station a man came and asked me 'How old are you? Tell me the truth or I will call the police and you will go to prison. I didn't know why.'"

*Abdullah, 15*

### Full Age Assessments

It is impossible to predict which young people will receive a full age assessment.

*Children's advocate 3*

Some children's advocates noted inconsistent practice regarding when and if a full age assessment take place. It was noted that some local authorities do not routinely undertake a full assessment and others have been known to do so only when put under pressure to do so by a legal representative or other concerned individual.

Concern was also noted about the time period available to social workers to gather the evidence necessary to conduct a full age assessment. Powys local authority has highlighted that “the correct assessment of age can be a complex and time consuming process” (2009: 22) and notes that “due to the complexity of the process and the often inherent delays caused by obtaining appropriate information to validate the person’s age (ie a birth certificate from overseas) there is often the need to extend the time available in making the assessment” (ibid). Anecdotal evidence from social workers suggested that there can be difficulties accessing UKBA information and long waiting times as UKBA caseworkers locate and transfer client’s files, which ‘have been removed or gone missing’ (Social worker 2).

The age assessment timescale for the purposes of welfare provision is also at odds with the timescale imposed by the asylum process. The UKBA asylum interview, which considers the outcome of the age assessment in the context of other material recorded on the separated child’s Statement of Evidence Form (SEF) is undertaken 25 days after the initial asylum application. The SEF has to be submitted to the UKBA 5 days prior to the asylum interview, leaving just 20 days for the separated child to provide appropriate evidence for their asylum interview. Social workers also reported feeling pressurised to make a decision on an age-disputed child to fit UKBA timescales (Social worker 1, 3).

Inconsistencies have previously been noted concerning the time local authorities in Wales take to conduct an age assessment with local authorities with smaller numbers of separated children conducting longer assessments while authorities with greater numbers conducted shorter assessments (Save the Children: 2008). This was reiterated by one children’s advocate who noted: “There is little consistency concerning the timeframe of age assessments. For example, one social services department assesses over a much longer period of time than its neighbour” (Children’s advocate 1).

## Age Assessment - Procedure

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As outlined in detail in the previous section, in the absence of statutory guidance, local authorities in Wales are obliged to carry out assessments which are compliant with relevant case law and the ADSS joint working protocol (2005). The social workers contacted for this report indicated that the Hillingdon Guidelines and attached proforma (2003) are the key tools used to collect information during the age assessment interview.

## Proforma

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Concerns were raised that the proforma document is in need of updating to reflect case law and policy developments subsequent to 2003. One legal practitioner noted that the form ought to set out at the beginning that all information recorded therein should be given the benefit of the doubt, however, this recommendation only comes at the end (Legal practitioner 4).

Children’s advocates noted that the proforma in its current form is restrictive with not enough space to record substantial information. The structure of the proforma was criticised for being “too bureaucratic” and “too rigid” (Social workers 2, 3). Other concerns raised were that the proforma places too much emphasis on physical appearance and background and not enough emphasis on cultural factors and considerations. One children’s advocate found that the guidance notes were “too negative and not objective enough” (Children’s advocate 5). It was also felt that the proforma does not include enough space to elicit the view and contributions of other professionals nor to explain why these views were not elicited. Children interviewed noted the age assessment proforma resembled the asylum form: “it was the same as the asylum form” (‘Zain’, 16). Children’s advocates and social workers noted that the proforma creates an “adversarial system” of questions and answers which replicates the asylum interview (Social worker 1).

Suggestions for improvements to the proforma centred on making it more “child-centred” (Social worker 1) and more of a collaborative effort between the

assessing social workers and young person: “What would be better is if we could ask more collaborative questions and work out the details together with the child” (Social worker 1). The young person should also be encouraged to look at the form and to write on it (Children’s advocate 3). It was also noted that child-centred visual tools, such as those employed by the Scottish Refugee Council’s Guardianship Project and “Life Story” eliciting techniques could facilitate the telling of the young person’s background story (WRC staff 5).<sup>44</sup>

### Duration of the assessment

The length of the assessment interview raised concerns for the wellbeing of young people being interviewed. One social worker reported that due to the pressure he was under to complete assessments he often spent 6 or 7 hours straight interviewing young asylum seekers. This would leave both him and the interviewee exhausted (Social worker 3). Children’s advocates noted that the duration of the age assessment interview leaves young people tired, confused and frustrated (Children’s advocates 1, 3, 4).

### Presence of an independent advocate

The recent (FZ) v LB of Croydon decision sets out that young people should have the opportunity to have an appropriate adult present at any age assessment interview not least because the individual to be a child and he is vulnerable. All advocates contacted noted that separated children are some of the most vulnerable children in Wales, and that it is essential for them to be able to access an effective advocacy service to safeguard against poor practice.<sup>45</sup> In Wales, independent advocates, such as the WRC Children’s Advocate in South Wales, and advocates from Tros Gynnal facilitate young people to access their participation rights under the UNCRC, look out for the best interests of the child, and can help to ensure that proper procedure is followed during the age assessment interview, for example in making sure that inconsistencies are put to the young person.

Children’s advocates and social workers noted the inconsistent provision of an independent advocate for young people during the age assessment interview in Wales. Good practice was noted in some local authorities with larger numbers of separated children where increasingly, independent advocates are allowed, and encouraged, to accompany the age-disputed asylum seeker during the age assessment. However, social workers in authorities with fewer separated children noted that they were sometimes unable to locate or provide an independent advocate during the assessment.

The presence of independent advocates throughout the age assessment process is seen to improve the procedural fairness of the process and can help to reduce subsequent challenges to the age assessment for local authorities:

The presence of an independent advocate could ensure that inconsistencies are put to the young person.

*Children’s advocate 2*

Everyone would benefit if an independent advocate was at the initial assessment with the child, or the individual claiming to be a child, so that the process doesn’t go so far.

*Legal practitioner 4*

Local authorities often don’t organize for an independent adult to be present – this would be helpful for both sides.

*Legal practitioner 2*

Article 14 of the EU Directive on Preventing and Combating Trafficking in Human Beings (which the UK Government applied to opt into in May 2011) calls on states parties to protect separated children who are identified as victims of trafficking through the provision of guardianship.<sup>46</sup> The Scottish Guardianship pilot, an independent advocacy project, has demonstrated not only the connections between separated children and child trafficking, but how maintained contact between

<sup>44</sup> See Scottish Refugee Council Guardianship Project. Available from <http://www.aberlour.org.uk/scottishguardianshipservice.aspx>

<sup>45</sup> Feedback to WRC presentation at the Advocacy Providers Group, 2011

<sup>46</sup> See Council of Europe Convention on Action against Trafficking in Human Beings (2005: 10.4). The UK has also committed to providing guardians to victims of trafficking through its recent opt-in to the EU Directive on Preventing and Combating Trafficking in Human Beings.

an advocate and trafficked child can prevent separated children from being re-trafficked.<sup>47</sup> The training and provision of independent advocates for all separated children would go some way to fulfilling this role and addressing safeguarding, advocacy and procedural fairness concerns.

### Interpreters

The improved use and quality of interpreters in local authority age assessments in Wales was cited as good practice (WRC staff 3; Social worker 3). For example, a social worker noted that at the time when they received 19 separated children they had not had an interpreter for age assessments (Social worker 3). Subsequent to this event, the local authority identified an interpreter who now works consistently with all of the Afghan separated children in their care.

Poor practice in the use of interpreters in Wales was also noted, with reports cited of some Welsh local authorities using interpreters over the phone (WRC staff 3; WRC staff 1). This contradicts the *Merton* guidance that states, “where an interpreter is required, he or she should ideally be present during the interview” (para 52). Children’s advocates noted that not having an interpreter present might jeopardise the ability of the young person to accurately communicate important details to the social worker, compromising the young person’s right to participate in the process. This also places additional stress on the young person (Children’s advocate 2; WRC staff 3). It was noted that while it is not always possible to find an interpreter who is available to attend in person, especially if it is for a language rarely spoken in Wales, for scheduled appointments and full age assessment interviews there should be sufficient notice to book an interpreter in person (Children’s advocate 3).

<sup>47</sup> See Scottish Refugee Council Guardianship Project. Available from: <http://www.aberlour.org.uk/scottishguardianshipservice.aspx>. Welsh Government should consider the findings of the Scottish Guardianship project particularly in respect to the links between separated and trafficked children.

### Effects of Age Disputes on Young People – Mental health implications

The process of age assessment and age disputes has been documented as having significant mental health implications on young people (Crawley 2005: 180 – 185). Age disputes, by their nature, mean that the word of the young person is doubted. This has a deep impact on a young person’s sense of self and ability to trust others. When asked what the experience of having their age disputed felt like, young people responded:

“I felt very scared. They asked me questions about my life, my family. I told them the truth. They told me they don’t believe me, that I am a liar.”

*Abdullah, 15*

Children’s advocates noted the effect that this has on young people’s sense of wellbeing:

“Their psychological health will clearly suffer by their age not being believed on arrival. You’re questioning their very sense of being.”

*WRC staff 2*

“They feel they’ve not been listened to. It takes a long time to feel like they can trust somebody.”

*Children’s advocate 4*

### Age Assessment Decision-making

#### Benefit of the doubt

Good practice concerning the application of the benefit of the doubt in age assessment decision making was noted in some local authorities in Wales. One social worker mentioned that they give the benefit of the doubt in all borderline cases and assesses age disputes as children. Another noted “We like to err on the side of caution if we are unsure and assess around the 17 mark” (Social worker 2). Another social worker noted that where there is no hard evidence, such as documentation of their age, local authorities will give

the benefit of the doubt. He noted that in these cases it is a question of whether the applicant's story hangs together and is consistent (Social worker 3).

Children's advocates and legal practitioners however raised concerns over the inconsistent application of the benefit of the doubt by local authorities in Wales. A consistent concern raised by many interviewees was that in certain areas of Wales where higher numbers of dispersals occur, there may be a tendency for young people claiming to be children to not be believed:

In this local authority there is a predisposition to assess children as over 18.

*Children's advocate 1*

The benefit of the doubt would not be on the agenda at all in this local authority.

*Legal representative 4*

## Physical appearance

The guidance laid out in *Merton* states that decisions on age must be holistic (taking account of the young person's appearance, demeanour, activities during the previous few years, background and credibility). All social workers contacted noted the older appearance of many age-disputed young people, their pronounced Adam's apples and facial hair suggesting that it can be particularly difficult to balance physical appearance and background of the individual being age assessed.

Children's advocates in Wales perceived that local authority age assessments may place disproportionate emphasis on the physical appearance of the young person in the decision-making process. They noted that despite the fact that social workers acknowledge that these physical developmental aspects of young men from other regions, particularly the Middle East, may occur earlier and be more pronounced than indigenous children, there is still a presumption in many age assessments that young men with such development were necessarily over 18 (Children's advocates 2, 3, 5).

## Demeanour

Anecdotal evidence from social workers suggested that it can be particularly difficult to assess the age of a young person based on their physical appearance. One social worker noted that it is particularly difficult to assess age in relation to the cultural and ethnic background of age-disputed individuals. He highlighted that the concept of being a teenager in countries such as Afghanistan is completely different to the UK and noted that reliable information detailing the lives and culture of teenagers in such places is scarce (Social worker 2). It was also noted that further training is necessary concerning the social, economic, and cultural activities that children take part in other cultures, which differ, enormously from British children.

Some children's advocates and legal practitioners noted inconsistent interpretation of the young person's demeanour in age assessment decisions. They noted that in certain cases the fact that a young person appeared shy and reserved was noted as behaviour consistent with being a child, whilst a different local authority assessment might result in the same information being interpreted as consistent with being over 18.

## Background

Some advocates considered that some Welsh authorities place disproportionate emphasis on the reasons for flight and journey to the UK, which while relevant are not the only key chronological events in establishing the age of a young person. It was felt that other aspects pertaining to the background and history of the young person, including their family, schooling, and the activities in which they engaged prior to flight, do not receive enough attention (WRC staff 2, 3; Children's advocate 3).

In this regard, concern was expressed that persistent questioning and interrogation concerning the reasons for flight and journey to the UK was one of the central traumatic features of the age assessment for young

people. Children's advocates warned that reliving the other deeply traumatic pre-flight and flight events in an interrogative setting may be deeply upsetting to young people, and that great care must be taken to avoid causing unnecessary anxiety to the young person.

### Credibility

Children's advocates also noted their concern that perhaps as a result of the wording of para 37 of the *Merton* judgement, some local authorities may focus disproportionately on the credibility of an asylum seeker's account in the age assessment to the detriment of their obligation to provide young people with the benefit of the doubt.<sup>48</sup> One advocate noted:

For example, young people are often required to remember exact dates like when they started school. I think British children would have a hard time remembering exactly when such a thing happened. But for age-disputed children, if they are confused this issue, they're considered not credible.

*Children's advocate 4*

The emphasis on reasons for a young person's flight and the journey to the UK was also seen as negatively connected with the focus on establishing the credibility of a young person (Children's advocates 1, 2, 3; WRC Staff 2, 3). It is important to remember that the purpose of age assessment is to establish the age, identity and needs of the young person. While the reasons for flight and journey to the UK are elements of establishing the chronological age, there is concern that they outweigh other elements of the background history in age assessments in Wales. There is a concern that by placing too much emphasis on the journey, social workers may be taking on a role

of establishing the credibility of the asylum case of a young person and drawing inferences about a young person's age from the perceived credibility of the asylum claim:

Because a young person might have lied about some aspect of the journey in his asylum case, there is an automatic assumption that he is lying about his age. This doesn't hold. Many asylum seekers have to lie at some stage of the journey to get here. This doesn't mean they're lying about their age but it seems with young people there is that assumption.

*WRC staff 2*

Anecdotally, it has been suggested that the Eurodac process has 'huge' implications for deciding whether the timelines the young person has supplied add up and this will be considered when deciding on the applicant's credibility (Social work manager). The Eurodac process is highly problematic in this regard since young people often give an older age to immigration officials in Europe with a view to avoid detention and to enable them to continue along their journeys. Due to this trend, child protection agencies have recommended that a state must be required to satisfy itself of age rather than rely on Eurodac information or any other country's assessment (Save the Children Europe: 2008). It is also important to recall UKBA's policy that evidence based on a Eurodac hit or other biometric evidence does not in itself amount to conclusive evidence of age (2010: 5.5).

Children's advocates and legal practitioners also expressed concern that the emphasis on the journey and route taken to claim asylum in the UK could also increase the pressure on local authorities to share the full age assessment with the UKBA, which they are not required to do. Details provided by young people in their age assessment concerning their journey to the UK may then be used in the UKBA asylum decision when establishing credibility. This concern is further discussed in the information sharing section below.

<sup>48</sup> Where there is reason to doubt the applicant's statement of his age, the decision maker will have to assess his credibility and will have to ask questions designed to test his credibility."

## Incorporating views of professionals

Social workers in Wales commented that because they make age assessments early after the arrival of the young people in the country, the opinions of teachers, foster parents and children's advocacy workers are not developed enough to be incorporated in the assessment (Social workers 2, 3, social work manager). This reinforces the concern that undertaking a full age assessment too soon after a local authority has encountered a young asylum seeker is prejudicial to a holistic, multi-agency assessment.

Children's advocates in Wales expressed concern that in certain cases, social services have not given adequate consideration of their opinions about the age of a young person (Children's advocates, 1,3; WRC staff 2). For example, three children's advocates, with extensive experience working with age-disputed young people in Wales, wrote to social services voicing their concerns about their client, Abdullah. Abdullah's age assessment history was complex: he had been assessed as an adult in the original authority of assessment and dispersed to Wales. When he appealed this assessment, a Welsh local authority reassessed him and found him to be a 16.5 years old. This was later overturned on the basis of a non-binding judgement by a judge in Abdullah's asylum case.

These advocates had worked separately with Abdullah over an 18-month period, and were convinced that he was a child. Their letter stated their belief that he had been erroneously assessed as an adult in the original authority of assessment and requested that a reassessment be carried out. Social services refused to reassess on the basis that this did not constitute fresh evidence. Abdullah was later arrested and faced forcible removal to Afghanistan. His case has now been accepted for judicial review on the basis that the decisions of the children's advocates were not taken into account.

## Incorporating views of paediatricians

Social services in two of the authorities contacted noted that since the Collins J ruling in *A & WK*,<sup>49</sup> they have ceased to rely on paediatricians' reports in age assessment decisions.

It is important to note that the Collins judgement laid out that while local authorities should take medical reports into account, they do not attract any greater weight than the observation of an experienced social worker provided social work assessment considered the medical evidence, was conducted over a longer period of time and that the relevant social workers are suitably trained and experienced in the conduct of the assessment of age and analysis of data.<sup>50</sup> Medical reports are therefore still a critical piece of evidence in a holistic age assessment and should be given due weight in age assessment decisions.

It is also recommended that if it is found that a medical assessment is deemed necessary, it should be carried out with the consent of the child by an appropriately trained and experienced medical practitioner (CLC 2009: 27).

## Reliance on & influence of UKBA information

Children's advocates and legal practitioners expressed concern that in certain local authorities in Wales too much emphasis is placed on information from initial screening information supplied by UKBA. However, social workers contacted differ in how they use background information from the UKBA to make their decision on age. One social worker noted that initial screening interview information is treated with the benefit of the doubt. He noted that it is good practice to look at the UKBA screening decision but that "this cannot be relied upon because it takes place so quickly" (Social worker 3). Another social worker also noted that the screening interviews couldn't be relied upon because the "age-disputed individuals are so confused and tired" (Social worker 2). However, a social work manager commented that in making decisions about

<sup>49</sup> *A v L.B. Croydon and WK v Secretary of State for Home Department and Kent* [2009].

<sup>50</sup> *A v L.B. Croydon and WK v SSHD and Kent* [2009] 939 (Admin).

the credibility of age, social workers in a local authority compare what an applicant has said to UKBA and to social services.

In making final decisions on age, a social worker noted that UKBA caseworkers are sometimes “too ready to classify young people as adults” (Social Worker 3). One social worker stated, that the pressure he felt from UKBA to assess young people as adults made it difficult to apply the benefit of the doubt principle to age-disputed applicants.

### Information sharing between UKBA and SSD

Local authorities contacted presented an inconsistent picture of the extent to which they share age assessments with UKBA. In Wales, some local authorities’ share the full age assessment with UKBA, while others share only the back page of the age assessment with UKBA in an attempt to show that it is *Merton* compliant. One social worker contacted noted that he only supplied the back page of the age assessment proforma to the UKBA. This was due to his concern for the protection of his clients, as he believed that information supplied elsewhere in the age assessment might be used against the child in the asylum decision. Another local authority noted that by sharing the whole assessment with UKBA they were increasing partnership working and that this would facilitate his own ability to access UKBA information on his clients. It is important to note that UKBA must not withhold information that may impact on local authority safeguarding responsibilities towards a child in need in their area.

A UKBA representative noted that case owners do not rely on information supplied in the age assessment when making asylum decisions (UKBA officer). However legal practitioners noted with concern that information provided or omitted in age assessments may be used in the decision making process on the asylum claim such as

instances where information provided in the screening or substantive asylum interviews are compared with that provided to the local authority.

There is a realistic concern that where local authorities conclude that the applicant was lying about their age, UKBA might use that information to conclude that they were also lying about their asylum claim (Matthews 2009). UNHCR has, for example, observed that information gleaned from the age assessment interview can be used inappropriately to discredit a child’s credibility in their asylum claim.<sup>51</sup> Such a use of information is in breach of the first principle of the Data Protection Act - that data may only be used for the specific purpose for which it was collected.

### Establishing the *Merton*-compliance of age assessments

The UKBA noted that the preference for receiving a full age assessment is also to accurately determine whether an age assessment was *Merton* compliant (UKBA officer). However children’s advocates and legal practitioners caution against interpreting whether an age assessment is fully *Merton* compliant from a written report since compliance is also about local authority processes: “If the UKBA wants to ascertain *Merton*-compliance, it needs to satisfy itself that local authority procedures are lawful, fair and transparent” (Children’s advocate 6).

Therefore, while it is not possible to tell whether or not an assessment complies with *Merton* and other case law solely by reading the report, it is sometimes feasible to establish to some extent if an age assessment is not *Merton* compliant, for example where only one social worker was present or where inconsistencies were not put to the young person. Children’s advocates raised concern over the quality of these determinations:

Even with the full age assessment, some UKBA case owners will deem them to be *Merton* compliant and accept them, when they clearly are not *Merton* compliant.

WRC staff 3

<sup>51</sup> See UNHCR Quality Initiative Project (2009: 3.4.10), Sixth Report to the Minister.

## Financial and reimbursement concerns

Social workers noted that they face difficulties getting reimbursed by UKBA for their Annex claims from UKBA Headquarters. A number of social workers expressed the view that the existence of different divisions across UKBA, which appear in their opinion to have little collaborative working methods further complicate the process of local authorities getting reimbursed (Social workers 2, 3). These financial considerations were noted as placing additional strain on local authorities.

The grant agreement between UKBA and SSD provides that UKBA must reimburse local authorities. However, a local authority where fewer separated children are resident have noted elsewhere that:

Complications can arise in that if an asylum seeker initially claims to be under the age of 18 and is then subsequently age assessed as being over 18, the local authority is not able to claim any money back from the Home Office.<sup>52</sup>

While UKBA has an obligation to reimburse social services, it is clear that these financial agreements may cause additional complications to the age assessment process. Children's advocates noted that these additional strains may adversely influence the ability of social workers to provide the benefit of the doubt in age assessments (Children's advocates 1, 2).

## Age disputes between UKBA and Social Services

Anecdotal evidence from social workers suggests inconsistent practice from UKBA case owners as to whether they dispute the age assessment decision of social services. It was noted that disputes over a social services assessment came down to individual case owners and that resolving a dispute over age "very much depends on whom you speak to at UKBA" and that "certain UKBA managers and case owners respect the age assessment decision of social

workers" (Social worker 2; 3). Another social worker noted that that they have had to argue with the UKBA that the child is in fact a child when they go to claim costs (Social worker 1).

## Challenging first assessments in Wales

In the event of a dispute over the age assessment of the local authority (for example over whether it was *Merton* compliant), it is the responsibility of the local authority responsible for the assessment to address the complaint. There is inconsistent practice across local authorities concerning the reassessment of their own age assessments. One social worker reported that in his local authority if they feel that the original assessment was poorly conducted they will instigate a reassessment themselves (Social worker 1). However children's advocates noted that it is very unclear how to challenge a Welsh local authority's assessment and that some social services in Wales are very reluctant to reassess:

The legal department of the local authority is very unclear about the mechanisms in place for challenging age assessments.

*Children's advocate 3*

When they do assess it again it feels as if they are taking an overly long time to act; with one disputed minor we literally had to follow up for weeks and threaten legal action through a community welfare solicitor to see if they had made a decision yet. The issue of the rights of that person as a minor seem secondary.

*Children's advocate 1*

## A legacy of managers overturning age assessment decisions

Age assessments are carried out by social workers who must seek approval for their decision from a social work manager. Information gathered from children's advocates, WRC staff, and legal practitioners between October and December 2010 indicated widespread concerns about the frequency with which some social work managers overturn the decisions of social

52 See Monmouthshire County Council (2010) Children's and Young People Select Committee Follow on Draft Report Re: Unaccompanied Asylum Seeking Children. [http://www.monmouthshire.gov.uk/downloads/Draft\\_Report\\_Asylum\\_Seeking\\_Children.pdf](http://www.monmouthshire.gov.uk/downloads/Draft_Report_Asylum_Seeking_Children.pdf)

workers to assess age disputes as children, at times without meeting the children in question.<sup>53</sup>

I have had cases where social workers have told me that they believe the young person is a child but are later overruled by a management decision. I have later been told by the young person that they never met the manager. I am concerned about decisions made in that way.

*WRC staff 3*

### **Effects of Age Disputes on Young People Missing Education**

The protracted nature of age assessments and age disputes have a devastating impact on children's educational development. One advocate referred to the process as "a waste of youth" (Children's advocate 3).

"I missed one and a half years. You know when time is gone it doesn't come back. One and a half years is not coming back. Now I go to school. I meet same age boys at school where I feel very good and very happy. When UKBA doesn't accept me, I'm not allowed to go to school. UKBA had already given me ID saying I am adult. There are many things I have not learned."

*Abdullah 15*

"I have clients who it has taken a year and a half to reassess. These boys were 14 and 15 when they were first assessed and have now missed out on vital education for the last year and a half."

*Children's advocate 1*

"It seems to be such a lengthy process. I know a boy who is age 15 and for over a year he wasn't in school. He has now been given the age of 16 but he missed out

on a year of school. While there are inclusion scheme educational projects like ESOL this can't compensate for school."

*Children's advocate 3*

"[Age-disputed young people] can't be taken into particular classes or school because their age is disputed so their education is often piecemeal."

*Children's advocate 2*

Under article 28 of the UNCRC, Welsh Government is committed to making secondary education available and accessible to every child. Welsh Government promotes minority ethnic achievement, including for children who are refugees or asylum seekers in education through a range of measures such as specific grant aid to local authorities (WAG 2009: 26).

There is a duty on all local authorities to provide suitable full-time education for all children of compulsory school age (5-16) resident in that local authority regardless of their immigration status. This education must be appropriate to their age, ability and any special educational needs they may have. Local authorities also have a duty to provide additional support for asylum seeking and refugee children who are 'looked after' under section 20 of the Children Act 1989. 'Looked after' children should not spend more than 20 days out of education.

The experiences of children and young people undergoing the age-dispute process in Wales highlight that they are not accessing these educational rights. It is essential that concrete measures are taken so that all children and young people who having their ages disputed are enabled to access the education to which they are entitled.<sup>54</sup>

<sup>53</sup> It is important to note that there have been no reports of managers overturning social worker age assessment decisions, since the fieldwork for this research was completed. This is a welcome and positive improvement.

<sup>54</sup> As set out in the Placement of Children (Wales) Regulations 2007 and Towards a Stable Life and a Brighter Future Guidance, it is in the best interests of the child that a school place is found as quickly as possible. Available from: [http://www.governorswales.org.uk/media/files/documents/2009-08-13/School\\_Admissions\\_Code.pdf](http://www.governorswales.org.uk/media/files/documents/2009-08-13/School_Admissions_Code.pdf).

## Children being assessed as under 18 but as older than they claim to be

Children's advocates also expressed concern that in some cases local authorities assess young people as under 18, but as significantly older than they claim to be. In one Welsh local authority in 2010 four children had their ages assessed as children but argued that they were younger than the age at which they had been assessed (Tros Gynnal 2011).<sup>55</sup> In particular, it was noted that there may a tendency to assess young people at 16.5 years and above.

Children's advocates highlighted that assessing children as over 16 has significant welfare implications since it changes the level and type of care to which the child is entitled under the Children Act 1989. It also has critical asylum implications. One WRC staff member was concerned at what he saw to be a pattern of assessing young people at 16.5, the exact age, which would prevent these children from appealing their refusal of asylum because of the length of their discretionary leave to remain (WRC staff 2). Another children's advocate noted concern at what they saw to be a trend of assessing young people, particularly Afghans, at 16 ½ as this would seem to facilitate their removal under new plans from the Home Office to return Afghan separated children over the age of 16 to proposed reception centres in Kabul (Children's advocate 2).

Children's advocacy groups also noted difficulties around the procedure and outcomes of amended assessments of applicants who had been initially accepted as children and later reconsidered as adults. In one case, "Hassan" was initially assessed as age 14. This amended by social services after allegations were made against him by the Welsh police. Social services maintained that these amendments to Hassan's age were based on evidence from the boy's foster parents concerning his antisocial behaviour. The amendments made to the age assessment were not put to the boy for clarification.

Hassan was detained in the adult section of a prison. Subsequently the charges were dropped against him and he was released however social services continued to refuse to support him. Hassan later absconded. His advocacy worker noted:

Hassan was disillusioned with social services before the re-assessment as he felt that they were not helping him and he could not trust them. The timing meant that he was held in custody in an adult prison as the judge initially accepted the local authority's views that he was over 18 while he awaited trial. Social services support was withdrawn despite the challenge to their age assessment being ongoing and within the accepted time limits. Hassan's mental health deteriorated whilst in custody and he lost all trust in everyone. He was released having been acquitted of all charges but he did not engage with services again.

*Children's advocate 5*

## Effects of Age Disputes on Young People – Absconding

Advocates also raised concerns that some young people -who have had their ages disputed- may have absconded from the care system as a result of not being believed and because of the protracted nature of resolving age disputes:

"We have had cases where young people disappear after a year or two of delays because they feel no one is believing them. They will go under the radar."

*WRC staff 2*

"In one case a boy had a solid asylum case but after he was assessed as an adult he disappeared."

*WRC staff 3*

Where young people go into hiding, children's advocates reported attempting to contact them directly or through friends however this is often difficult and little is known about their situation. Research on the

<sup>55</sup> Of these, one was detained, two were granted discretionary leave to remain, and one dispute is ongoing with an application for judicial review.

lives of undocumented migrant children in the UK indicates that their access to healthcare and education will be minimal (Sigona and Hughes 2010). It is also possible that without adequate safeguarding and protection, these young people are vulnerable to abusive employment and accommodation arrangements (ibid).

### **Alternatives to current age assessment procedure**

When asked how the age assessment interview in Wales could be improved, many respondents highlighted the need for a multi-agency, holistic model. Children's advocates and legal practitioners noted serious concern over the independence of local authority social workers in making age assessment decisions given the reliance of local authorities on funding, information sharing and the decisions of UKBA case owners. Children's advocates noted that given these independence issues, it would be best practice for age assessments to be conducted by independent social workers, or by a panel of independent experts. This draws on the concept of independent multiagency assessment centres proposed by Crawley (2007) who promoted the idea of centres funded independently of the local authority responsible for providing care (191 - 193). It was recommended that such assessment centres must be genuinely holistic and include social workers, paediatricians, psychologists, teachers, and others able to contribute to the assessment process.

To comply with the best interests principle of the UNCRC, as outlined by the Un Committee on the Rights of the Child, age assessments in Wales should engage various disciplines and methodologies to ensure a holistic assessment takes place.<sup>56</sup> The age assessment process requires multi-discipline methodology, which

abides by scientific principles to ensure coherent and consistent outcomes, regardless of the capacity of the local authority and the complexities of each individual case (Mougne and Gray 2011). To avoid assessments that are made on subjective cultural and biological assumptions, objective methods should be used that are thorough and scientific in their assessment and will aid or ensure safer and more accurate decisions. Cultural, psycho-social and medical expertise and information sources are vital in the decision making process (ibid).

It is in the best interest of the child that age disputes are resolved quickly and they are not subjected to a protracted dispute. Because age will affect how the asylum claim is handled, the age of the separated children should be established prior to the substantive asylum interview taking place.

The best interests principle must also inform the location in which it takes place and the manner in which it is conducted. The Un Committee on the Rights of the Child states that "the assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques" (2005: para 20). For the assessment to be fully in line with the UNCRC, account must be taken of the separated child's vulnerabilities and individual needs, they must be allowed to fully express themselves and their opinion be given due weight in accordance with their age and maturity. Finally, the child must be given the opportunity to respond to the issues that are identified in the assessment process (Mougne and Gray 2011).

While for financial reasons it may not be possible to establish independent age assessment centres at this time, it was noted that other local authorities in the UK employ to a greater degree a holistic, multiagency assessment using teams including doctors, teachers and social workers. Models such as Millbank in Kent County Council have been regarded by legal practitioners

<sup>56</sup> As outlined by the Un Committee on the Rights of the Child (2005) "The (age) assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child, giving due respect to human dignity, and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt."

and children's advocates as providing a more thorough age assessment procedure and were cited as a model of good practice for age assessments in Wales (Legal practitioner 1, 2, 4; WRC staff 3).<sup>57</sup> It was noted that improvements in the practice of age assessments must include the widening of the number of multi-agency experts assessing the child, an increase to the time period over which the assessment takes place, and arrangements to ensure the safety of age-disputed young people throughout the age assessment process.

<sup>57</sup> See also recommendations from Children's Commissioner for England (2011) *Landing in Kent*. Available from: [http://www.childrenscommissioner.gov.uk/content/publications/content\\_465](http://www.childrenscommissioner.gov.uk/content/publications/content_465)

## II. DISPERSED TO WALES: ASSESSMENTS AND REASSESSMENTS BY UKBA AND LOCAL AUTHORITIES

“I’m concerned that children are getting lost in dispersal.”

Legal practitioner 1

Local authorities in Wales must sometimes respond to young asylum seekers who are already known to the authorities and have been dispersed to Wales by UKBA either because they have been considered as adults under the ‘strongly suggests’ criteria of UKBA, or because they have already received a local authority age assessment which has judged them to be an adult.

The dispersed group experience many of the same problems as the “direct arrivals” group but are also subject to additional challenges in the age assessment and dispute process. The additional problems that they face are explained here.

### Co-location of social workers at UKBA immigration units

Some of the dispersed individuals in Wales have had their age assessment take place at UKBA Asylum Screening Units (ASU) and ports. In areas of high numbers of arrivals of asylum seekers, UKBA have made arrangements for local authority social workers to be co-located at UKBA units, to conduct an assessment for those individuals categorized by immigration officials under the very strongly suggests criteria as ‘age-disputed.’<sup>58</sup>

It has been argued that an accurate age assessment cannot take place in an immigration setting since children cannot differentiate between the roles and responsibilities of the different authorities they come in contact with.<sup>59</sup> The Children’s Commissioner for England has noted concern that a local authority conducting its own age assessment at the ASU during the screening process may lead to a conflict of interest (11 Million 2008: 16).

Immigration advocates in Wales reiterated this concern:

These children have just been through horrific journeys, they are tired, confused and scared. They have been put through a series of questions from immigration officers. Where a social worker then asks them another series of questions in the same building it is not surprising that they believe the age assessment is part of the same process.

*WRC staff 3*

Legal practitioners also highlighted the pressures that social workers, particularly at ports of entry, may be under:

These social workers are under so much pressure. With the best will in the world, if a child’s version isn’t credible for whatever reason, including abject fear, they may not have time to go into it.

*Legal practitioner 5*

As a result of these pressures, the Children’s Commissioner for England has concluded Screening Units do not provide the right environment for young people to be age-assessed and has recommended that this practice cease (2008).

### Dispersal

Under the Immigration and Asylum Act 1999, young asylum seekers found to be adults who are disputing the assessment of UKBA and the local authorities may be allocated accommodation in dispersal areas around the UK. In this way, they may be routed to the Lynx Initial Accommodation (IA) unit in Cardiff for new

<sup>58</sup> On-site social work teams are available at Croydon and Liverpool Asylum Screening Units (ASUs), Dover and Gatwick and are on call at Heathrow (UKBA 2010)

<sup>59</sup> See 11 Million (2008) and Crawley (2007: 191).

dispersals. While the Lynx is run and staffed by private contractors, the WRC provide independent advice services from an onsite annex and regularly identify children subject to age disputes or who have been identified as adults by UKBA.

### **Effects of Age Disputes on Young People – Accommodation with older adults**

Young people who are challenging their age assessments are accommodated as adults under UKBA's 'no choice' accommodation policy. Age-disputed young people will therefore always be accommodated in shared housing, often sharing a room with adults who are significantly older and not from the same country or ethnic background. Age-disputed young people who have subsequently been reassessed as children are known to have been accommodated with adults. There are no safeguards or screening processes in place to determine who age-disputed young people are housed with.

Children and young people in Wales emphasised how frightening the experience of being accommodated with an older man was:

"I was very scared of him. I was not happy, I was very upset. I would come and go very quickly and always lock my door when I slept."

*Abdullah, 15*

"I had to live with big men, I was scared and asked for locks on my door."

*Samuel, 16*

"He made me do his work for him and clean the house."

*Zain, 15*

The policy of accommodating young people who are challenging their age assessments raises serious child protection concerns. Children have been subjected to being accommodated in the same room as adults, and have been subject to bullying, abuse and isolation. One children's advocate noted: "I cannot stress how inappropriate it is to accommodate these boys with

older men. These children are at grave risk of abuse" (Children's Advocate 1).

Social workers also voiced concern that erroneous age assessments where an adult is assessed as a child also raises serious child protection concerns for the children with whom they would be accommodated.

Welsh Government is obliged under article 19 of the UNCRC to protect children and young people up to the age of 25 from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment. Safeguarding vulnerable children is a key priority for the Welsh Government who have been working to ensure that the arrangements in place for statutory agencies with legal responsibilities in children's safeguards are sufficiently robust. The practice of accommodating vulnerable children and young people with much older adults is a major challenge to Welsh Government's safeguarding commitments. It is in direct violation of the UKBA's section 55 safeguarding duties, which also extend to the private contractors the UKBA employs to carry out services, such as the provision of accommodation. It is essential that this serious gap in child safeguarding is immediately addressed by Welsh Government, UKBA and in contract agreements with private contractors.

### **Young people are not given information relevant to their age assessment**

In Wales, it is normally only discovered that a young person is disputing the age at which they have been assessed by UKBA, or local authorities, if they mention this when interviewed by WRC staff working in the IA unit. Once identified by the WRC staff, young people who claim to be children are referred to the WRC Children's Advocacy Officer who tries to verify whether an age assessment has already been carried out prior to dispersal.

Article 13 of the UNCRC provides that children have the right to information and that support is given to children to access this right. However age-disputed young people sometimes arrive in the IA unit in Cardiff without any documentation about the age assessment that has taken place:

There is often no record of whether a young person has had an age assessment and they themselves are often confused as to whether this has been carried out, thinking that this is also part of immigration procedure. Finding out whether they've been assessed is a minefield.

*WRC staff 3*

Furthermore, young asylum seekers who dispute the findings of the assessment concluded in the original local authority are often given no advice as to how to challenge their assessment upon dispersal. One legal practitioner noted that for the UKBA and local authorities to fulfil their legal obligation to inform young people of their rights in the process, they must be “given much clearer advice about what they can do to challenge the age assessment” (Legal practitioner 1).

Due to the lack of any transfer of information in dispersal concerning ongoing challenges to age assessments, there is a risk that a young person who claims he or she has been wrongly assessed will continue to be treated as an adult. A barrister specialising in age assessment cases in the UK for the past four years noted “once a reputed child is dispersed to places where there is no referral mechanisms such as the Children’s Panel in London, I suspect many fall through the gaps” (Legal practitioner 2).

### **Professionals in Wales face barriers to resolving age disputes with English social services departments that were the authority of first assessment**

If it has been established that a young person has already had an initial age assessment in a local authority, and has been found to be an adult and dispersed on the basis of this initial assessment, it can be particularly difficult for advocates working with dispersed young people to find out information about the initial assessment.

There’s no pattern amongst social services in other local authorities where the initial assessment has taken place. Getting a copy of the initial assessment can be very difficult and is subject to many delays. Social services may be reluctant to send it or it hasn’t been written up.

*WRC staff 2.*

In terms of challenging the age assessment of the original authority of assessment, the ADSS Protocol lays down that where no new evidence is brought forward that was not considered at the original assessment, the issue should be treated as a complaint about the original assessment and referred to the local authority responsible for it (13b).

Children’s advocates and legal practitioners reported that it is very difficult to get the original assessing local authority to accept that the original assessment was not *Merton* compliant. One legal practitioner also noted that the time limit imposed on challenging the assessment in the initial authority of assessment is at odds with the Supreme Court’s finding that age is an immutable objective fact (Legal practitioner 4).<sup>60</sup> Under this reasoning, assessments from the original authority ought to be subject to being challenged at any point following the assessment.

The system of dispersal further complicates the process of challenging an age assessment since by this point the age-disputed young person is resident in a new local authority. Legal practitioners have experienced reluctance on the part of the original local authority to revise their assessment, with one legal practitioner noting:

There is sometimes a sense that the original local authorities no longer feel responsibility for the young person or their age assessment. These young people are falling through the protection gaps between local authorities.

*Legal practitioner 2*

## Reassessment

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### Culture of disbelief

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Anecdotal evidence suggests that regardless of how poor the quality of the original age assessment, dispersed individuals challenging their age disputes are treated with more hostility and disbelief than direct arrivals. Some social workers voiced their concern that young people challenging the age assessments of the original authority of assessment move from one local authority to the next to try to get reassessed as favourably as possible. Anecdotal evidence suggests that local authorities do not want to appear as “soft” when carrying out reassessments.

A social work manager noted that local authorities were “most wary” of those young people who disputed an age assessment late in the process. This echoed the impressions of some other social workers contacted that challenges to age assessments and reassessments have become a way for young people to try to prevent or delay removal to their country of origin.

#### Problems securing a local authority reassessment

In the dispersal context, where new evidence concerning an applicant’s age has been brought forward the host local authority should continue to reassess the age of the applicant taking full account of all sources of information (ADSS 2005). Children’s advocates and legal practitioners noted inconsistent local authority practice in undertaking reassessments based on fresh evidence. Although the lack of statistics makes it difficult to verify, anecdotal evidence suggests that in areas of Wales that have greater numbers of dispersed young people who dispute the original age assessment, local authorities have been known to be less willing to reassess based on fresh evidence and the opinion of other professionals. It was reported that in authorities with smaller numbers of dispersals, social workers may be more willing to reassess dispersed young people who are challenging their age assessment. One legal practitioner who has undertaken five age dispute cases in Wales noted that the main problem they have encountered is specific to one local authority and “their

apparent refusal to redo an age assessment despite their lawful duty to do so, based on new evidence” (Legal practitioner 1).

Legal practitioners and children’s welfare advocates noted that the reluctance to undertake a reassessment could be due to pressure to not reassess emanating from UKBA. One children’s welfare advocate cited that local authorities were at times unwilling to carry out a full assessment until they receive further clarification from UKBA. A legal practitioner who has represented asylum seekers in hundreds of age dispute cases in England and Wales over the past four years noted:

I’m very concerned that there seem to be some very prejudicial informal links between this local authority social services department and the Home Office which prejudice our clients quite significantly. This doesn’t happen in other areas. In other local authorities in England we’ve never had a situation where the local authorities say they have already spoken to the Home Office and they’re not going to accept fresh evidence or we’ve already shown the Home Office the documents and we’re not going to accept them.

*Legal practitioner 1*

This local authority is known to have immediately referred the case to UKBA. Children have been subsequently detained on request for a re-assessment.

*Legal practitioner 4*

### Legal challenges to reassessment process

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Local authorities in Wales can find themselves challenged by young people and individuals and agencies acting on their behalf for not reassessing. Children’s advocacy workers stressed that the recourse to legal challenges around age disputes is often due to the lack of mechanisms for mediation with local authorities. Failure to negotiate a solution that is agreeable to both the local authority and the young person means that many cases result in some intervention by a lawyer.

**Without other routes to resolve disputes, young people without lawyers find it difficult to challenge age assessments effectively.**

The lack of welfare solicitors in Wales is also a particular barrier to effectively challenging refusals to reassess. There are no children's welfare solicitors specializing in age disputes and issues concerning asylum-seeking children and just four legal practices deal with immigration and asylum cases. Children's advocacy workers in Wales have noted that the lack of welfare solicitors in Wales means a huge amount of time, cost and effort is spent going to solicitors in London (WRC staff 2).

The lack of children's welfare solicitors in Wales may also contribute to the problem of challenges to age assessments not arising until age-disputed young people have become destitute, which can be seen as a factor contributing to the culture of disbelief about the legitimacy of such challenges. One legal representative of Wales-based age-disputed young people highlighted her concerns that "immigration lawyers may not recognize that a claimant has been wrongly assessed as an adult at the beginning of the immigration process. This can seriously prolong the age dispute process for the young person in question" (Legal practitioner 1).

Another lawyer highlighted the fact that immigration solicitors may not understand the welfare aspects of a claim, particularly where a child is accepted as a child but their age is still disputed (Legal practitioner 2). Children's advocates and legal practitioners also noted that in many cases, immigration solicitors in Wales will take on the asylum claims of age-disputed young people, but will refuse them legal aid based on a merits test (Children's advocate 4; Legal practitioner 6). One legal practitioner that the Legal Services Commission have said that all separated children or age-disputed minors who raise a convention reason for their asylum claim should be granted controlled legal representation (Legal practitioner 6). However, in practice, the merits of their cases

are assessed and refused in exactly the same way as adults (Legal practitioner 7). The effects of these delays have serious implications for the child's protection and welfare. As one children's advocate noted: "often, by the time they've found legal representation and challenged an assessment it's too late and a child has already been put in detention" (Children's advocate 2). Further difficulties may then arise in getting a solicitor to represent children who have been detained (Legal practitioner 4).

**Effects of Age Disputes on Young People – Detention<sup>61</sup>**

The cases of Amir (p 22), Michael (p 40) and Hassan (p 55) demonstrate that young people subsequently assessed to be children have been subject to detention with adults. Amir has been detained four times, whilst Michael spent one week in an adult detention facility. Both have described the fear and pain involved in this experience. Amir tried to take his own life after his first period of detention and repeatedly described his fear of detention and deportation.

Research on the effects of immigration detention on children in family detention centres the UK has found that children experience serious psychological harm including attempted suicide, suicidal ideation, heightened anxiety and food refusal. Children in these immigration detention centres have been known to witness and experience violence and physical harm particularly during attempts to remove them from the UK (Medical Justice 2010). Children's advocates in Wales noted that it is likely that children detained in adult-only detention facilities, as was the case for Amir, experience even harsher treatment (WRC staff 2; Children's advocate 3).

Article 37 of the UNCRC states that children should not be detained except as a matter of last resort and for the shortest time possible (37.2). Where children are deprived of their liberty they should be separated from adults (37.4) According to UN guidelines, 'minors

<sup>61</sup> For further details please refer to Welsh Refugee Council and Children in Wales (2009), *Briefing on Children in Detention*. Available from <http://www.welshrefugeecouncil.org/joint-briefing-on-children-in-detention-with-children-in-wales/>

who are asylum seekers should not be detained' (1999). The UK government has repeatedly stated its commitment to ending child detention. Current UKBA policy is to detain separated young people only in exceptional circumstances and not for more than 24 hours. It is essential that Welsh Government and UKBA work to fulfil their child safeguarding obligation and ensure that under no circumstances are children subjected to detention.

### **UKBA not accepting the reassessment decision of social services**

One social worker noted that in cases where an application for a reassessment comes at the end of an applicant's asylum case, the local authority may be under substantial pressure from UKBA to not reassess as a child as removal directions may have already been served (Social worker 1). Anecdotal evidence suggests that problems have also arisen where the UKBA has not accepted a local authority reassessment where the applicant is found to be under 19. The case of Clara, 17, below illustrates some of the difficulties which local authorities may encounter.

#### **Clara, 17** **Case study 3**

Clara came to the UK from Democratic Republic of Congo. She was considered by UKBA to be age-disputed and referred to a local authority where she was assessed as over 18. She was then routed directly to a smaller local authority in Wales, where a youth worker identified that she appeared traumatised, was very vulnerable and was living in adult accommodation. Clara told her that she was 17 and the youth worker referred her to the local authority, who carried out an age assessment and agreed that Clara was a child and agreed to accommodate her.

Initially the UKBA would not accept the reassessment of this local authority and the local authority decided that as a result they could not accommodate Clara. WRC's Children's Advocacy Officer was informed of this decision and reminded the local authority of their obligation to accommodate and support someone

who they have assessed as a child in need in their area. Based on this intervention, the local authority immediately accommodated Clara. UKBA continued to dispute her age.

Clara then legally challenged the UKBA's decision to treat her as an adult with the support of a welfare solicitor. The UKBA agreed to accept Clara's reassessed age as a child and granted her discretionary leave. Clara continues to be supported by the local authority, is living with a foster family, and is attending college.

### **Litigation culture**

Anecdotal evidence from social workers suggests that local authorities believe that a costly litigation culture has grown up around age assessments in which legal challenges, including threats and actual judicial reviews to age assessment, are becoming more frequent. Children's advocates and social services underlined the stress and costs involved in judicial reviews (Social work manager, Children's advocates 1,2,4). Children's advocates noted that they have to increasingly resort to this measure to ensure that children are protected because of the difficulties involved in getting Welsh local authorities to reassess dispersed clients who they believe to be children.

A social work manager noted that the financial pressures of judicial reviews are driving decisions to not reassess age-disputed young people in their local authority.

### **Decision to no longer reassess**

Children's advocates have also expressed concern that this decision to not reassess may be a reaction to the increasing costs and pressures of judicial reviews over age assessments. They also noted that this decision could be motivated in part by the 2010 Barking and Dagenham<sup>62</sup> decision which clarified that local authorities should support separated children after they have turned 18 rather than transfer them to UKBA support. Previously, upon turning 18, some

<sup>62</sup> R (on the application of SO) v London Borough of Barking and Dagenham [2010] EQCA Civ 1101.

separated children were being transferred from local authority to UKBA support. As a result of Barking and Dagenham it will now fall to local authorities to continue to provide accommodation and support to former relevant children who are asylum seekers or failed asylum seekers until the age of 21 (or 24 if the person is pursuing a programme of education or training) with no additional grants from UKBA.

One social worker contacted stressed that this decision has huge implications for social services in their care of separated children (Social worker 2). Children's advocates noted that this may place further additional pressure on local authorities to not assess young people as under the age of 18 due to these financial pressures (Children's advocates 2, 5). A WRC staff member expressed concern that these additional strains may adversely influence the ability of social workers to provide the benefit of the doubt in age assessments (WRC staff 3).

Regardless of the motivation behind the decision to no longer reassess, the failure of local authorities to reassess age-disputed applicants could result in social services ignoring the welfare and protection needs of a child in need in their area. Given the evidence concerning the poor quality of age assessments from original authorities of assessments, and the prevalence of fresh evidence emerging after a young person has been dispersed, it is essential that local authorities in Wales ensure that fair, transparent and legal reassessments take place in line with their safeguarding duty. It is vital that they are given the political and financial support to do so by Welsh Government and the UKBA.

### Effects of age assessments and age disputes on the asylum claim

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It is difficult to establish with certainty the extent to which age assessments and age disputes impact the asylum claims of young people in Wales. What is clear is that whether a young person is assessed as a child or an adult has serious implications on the manner in which their asylum claim is processed and the level of protection which the young person is afforded. It is also likely that being labelled 'age-disputed' has an impact on the credibility of that applicants' asylum decision.

As outlined in the policy section, where a young person is known to be a child, or is considered 'age-disputed' following the UKBA initial screening, UKBA must undertake the asylum interview according to its guidelines Processing an Asylum Application from a Child which aim to ensure that a child receives an age-appropriate asylum determination procedure. Where a young person who claims to be a child is assessed as an adult under the "strongly suggests" criteria or has been assessed by a local authority as an adult, they are not eligible to these procedural protections.

Where the assessment from the original authority of assessment is challenged and the young person is reassessed as a child, the UKBA is required to fully consider the findings of the second authority (ADSS 6.3). In practice however, children's advocates and legal practitioners have found that UKBA has not re-interviewed young people found to be children under their own guidelines. The following case study of Samuel illustrates this concern.

#### Samuel, 16 Case study 4

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Samuel arrived in the UK from Cote d' Ivoire in May 2009. He claimed asylum upon entry and told UKBA that he was 16. The social services department of a London borough carried out a full age assessment one week after his arrival. They took two hours to do this. His interpreter was from Iraq and spoke a completely different form of Arabic to Samuel, which he could not

understand.<sup>63</sup> Samuel described the interview: “They asked the same questions, over and over, over and over about my journey to UK. I felt not good.”

Samuel was assessed to be an adult. He was given a written copy of his age assessment decision but he could not read it as it was in English and his interpreter had already left. He was then dispersed to the Initial Accommodation hostel in Wales.

The UKBA processed Samuel’s asylum case as if he were an adult. He was refused asylum on the basis that he wasn’t able to provide sufficient detail about his asylum claim as would be expected from an adult.

WRC’s advice team working in the hostel identified that Samuel had been assessed as an adult but claimed to be 16. WRC made an appointment for Samuel with an immigration solicitor. The solicitor referred him to a pediatrician who assessed him as a minor. Samuel was then sent his identification documents by a cousin in Cote d’Ivoire, which were sent to be verified by UKBA.

On the basis of this fresh evidence, the Children’s Advocacy Officer convinced a social services department in Wales to reassess him. Following this assessment the department accepted his age as a minor. UKBA were informed of this decision and were asked by Samuel’s solicitor to reconsider their asylum decision in light of this age assessment. UKBA did not re-interview him as a child.

A Welsh legal charity challenged this decision on the basis that UKBA ought to have re-interviewed Samuel according to their own guidance on Processing an Asylum Application from a Child (2007: 16.4) which outlines the following:

“A case owner must not draw an adverse credibility inference from omissions in the child’s knowledge or account if it is likely that their age or maturity is a factor or if there are logical or other reasons for those omissions. The benefit of the doubt will need to be applied more generously when dealing with a child, particularly where a child is unable to provide detail on a particular element of their claim.”

<sup>63</sup> And, as stated previously is contrary to *Merton* which sets out that “Great care is required to ensure mistakes are not made. A note of the questions and answers by the interpreter would be highly relevant to any assertion that the applicant had been misunderstood or that what he said was not correctly noted” (*Merton* para 52).

Permission to challenge the asylum decision has now been granted.

### Impact on credibility

Because the UKBA doesn’t accept my age, he doesn’t accept my case. They say, “your age is lie, your case is lie.”

*Abdullah, 16*

As outlined in the previous section, there are concerns that local authorities may make adverse credibility findings concerning an age assessment based on information from UKBA. There is also legitimate concern that this process can work the opposite way. UKBA case owners place significant emphasis on the consistency of statements given at age assessments and those given in the asylum interview. Where UKBA receive a full age assessment, legal practitioners and children’s advocates have noted their concern that the information gathered to establish the age of the young person might be misused in establishing the credibility of their asylum claim.

### Impact on securing protection – Refugee Status, Humanitarian Protection & Discretionary Leave to Remain

The Home Office does not provide statistics on the ultimate protections granted to age-disputed asylum seekers. However, given the potential impact that adverse credibility findings from the age dispute may have on the asylum claim, legal practitioners have suggested that they may well receive less protections than separated children. At present, the major form of protection given to separated children is Discretionary Leave to Remain (DLR) in the UK until they are 17 ½ or for three years, (whatever is the shorter time), on the basis that no adequate reception arrangements exist in their country of origin.<sup>64</sup>

<sup>64</sup> What constitutes “adequate reception and care arrangements” remains unclear. In 2010, the UK government issued a bid for contractors to build a reception centre in Kabul to which they would return Afghan children over the age of 16. At the time of the announcements it was foreseen that this would take place in 2011. This proposal has raised deep concern amongst children’s advocates, social workers and legal practitioners in Wales as to how the UK government intends to fulfill its safeguarding obligations in the context of an ongoing conflict.

### Effect of Age Disputes on Young People – Enforced Removal

Age-disputed young people are not entitled to the protection of DLR whilst they are undergoing the age dispute process, the consideration of which will only take place once the local authority's findings on age are known (UKBA 2010b: 2.1). A young person who claims to be a child, but does not receive a local authority reassessment, are therefore subject to being forcibly removed to their country of origin.

The forced removal of young people who claim to be children raises grave concerns for their safety and wellbeing. As noted in the introduction, and reinforced by the case studies herein separated children are known to have fled their countries of origin without their families for reasons such as targeted and generalized violence, trafficking and forcible recruitment. Their parents may have been killed, imprisoned or disappeared. Their return to conditions of war and persecution, as is the ongoing context of Afghanistan where the UKBA would have deported Amir, poses enormous concerns to the safety and wellbeing of these children.

The case of Amir highlights the very real risk that separated children in Wales are subject to forced removal. This may already have occurred. In August 2009, the UKBA removed a young man, 'Hawar' to Afghanistan. Upon arrival in the UK, Hawar held Afghani ID stating that his age was 16. This was confirmed by an independent age assessment. However, social services conducted an age assessment which found him to be 18 years of age. The Afghani ID was never passed to an independent expert for verification despite numerous requests from both the WRC and Hawar's solicitors. Throughout his asylum claim, Hawar remained consistent in his account about his age.

Social services agreed to undertake a reassessment however Hawar was taken into custody by UKBA and served with removal directions. He was then forcibly removed to Afghanistan. This removal took place despite UKBA having been notified in writing and by telephone that the local authority social services department had agreed to reconsider their original decision. They asked to be granted access to him in detention to carry out a new age assessment before the time of the removal but this was not granted.

In removing this young man without allowing the further age assessment, UKBA failed to take the necessary steps to ensure that the welfare of a child was not at risk. This was particularly regrettable given the local authority's willingness to carry out the assessment quickly.

The threat of forced removal continues to hang over young people seeking asylum in Wales. One children's advocate noted that UKBA's attempt to deport Amir caused enormous anxiety within the separated children's community in one city in Wales:

"The boys panicked and were sure that they could be deported back to the violence in their countries at any time. It has had a really devastating impact on them."

*Children's advocate*

# CONCLUSIONS

This report has looked at the process and implications of assessing age in Wales. The following conclusions highlight some of the major issues and make suggestions for possible ways forward.

## **1. The process of age disputes is harmful to children in Wales. Children are being denied the UNCRC rights which they are entitled under Welsh legislation.**

The findings of this report, like other reports before it, reveal that the process of age disputes and their resolution continues to be physically, psychologically and emotionally harmful to children in Wales whose protection, provision and participation rights guaranteed under the UNCRC, are being withheld at every stage of the process. The case studies outline the devastating impact that the wrongful assessment of children as adults can have on both their asylum and welfare rights. Children and young people in Wales have been processed through the much harsher asylum system for adults and have not been provided with the safeguards they are due under UKBA's Section 55 obligation. They have been detained and subject to forced removal. Children have also been subjected to being accommodated in the same room as adults, and have been subject to bullying, abuse and isolation. Protracted disputes over the age of young people has meant children in Wales as young as 14 have had no access to the formal education and have missed out on crucial schooling to which they are entitled.

The research found that the poor treatment of children seeking asylum in Wales is driven, in part, by a persistent culture of disbelief and an absence of the proper application of the benefit of the doubt principle. Despite evidence that children have been wrongly assessed and mistreated as adults by both the UKBA and local authorities, there appears to be an entrenched belief that the majority of age-disputed young people are adults posing as children. The report finds that, this is particularly the case with young people who have been dispersed to Wales: even in cases where the quality of these age assessments

were evidently poor and non *Merton* compliant, and where substantial fresh evidence has come to light to support the young person's claim to be a child, certain local authorities are deeply reluctant to reassess.

The majority of these young people come from countries where age is not considered important: they may not have identity documents and often look older than indigenous children because of their ethnic make-up and because of the trauma they may have experienced in their country of origin or on the journey to the UK. Given the inaccuracy of age assessment techniques, and the known problems of the age assessment process in the UK, in many cases it will not be possible to establish with accuracy the exact age of these individuals. There will therefore always be an element of doubt in these cases: the full application of the benefit of the doubt, in accordance with the UNCRC overriding principle of the best interests of the child is critical.

## **2. Despite the UNCRC duties on Welsh Government and the UKBA's safeguarding duty there are critical problems in the age assessment process in the UK and Wales. These are further complicated by the dispersal system**

Current practice around the assessment of age is deeply flawed and conflicts with the best practice guidance of the UN Committee on the Rights of the Child. UKBA's use of the "very strongly suggests" criteria continues to result in young people in Wales being wrongly assessed as adults from the beginning of their asylum application. This criteria is overly subjective and has been known to result in children being placed in the adult welfare and asylum system from the beginning of the process. Children seeking asylum in Wales may also be at a specific disadvantage in accessing advice and advocacy services since there is no duty on UKBA immigration officers to refer age-disputed young people to the WRC case workers.

While there have been certain good practice developments concerning the undertaking of age

assessments in Wales, notably the provision of interpreters and the increased presence of independent advocates, concerns persist about the transparency, fairness and legality of age assessments in Wales. Young people believe that social workers are part of the immigration authorities, not least of all because some age assessments take place in police cells and because young people are not made aware to the point of understanding the difference in functions between the two authorities.

The age assessment process across local authorities remains inconsistent: full assessments are not routinely undertaken, there are large discrepancies in the time taken to conduct the assessment, and information sharing of age assessments between social services and UKBA differ from one authority to the next. In decision-making it was found that too much emphasis is placed on the physical appearance, journey and asylum claims of the young person. Considerations of cultural and personal background and the opinions of other professionals such as doctors, teachers, foster carers and children's advocates are not given enough weight. Concerns also persist about the fairness and independence of the decision-making of some local authorities in Wales: in some cases, that UKBA has undue influence on age assessment decisions. Inconsistent practice in the undertaking of reassessments was also attributed to an over-reliance on UKBA information, which is considered prejudicial to the independence and lawfulness of the assessment. There are also difficulties in challenging age assessments where Welsh local authorities are the original authority of assessment. There appears to be a disposition in some local authorities to amend age assessments where new evidence appears to indicate that the child is an adult, but not the other way around.

The dispersal system further compounds the issues raised in the "Local authority of first assessment." Dispersed age-disputed young people with whom the WRC come in contact are frequently unaware that they have had an

age assessment and have no documentation of the original assessment. Consistent advice is not provided to age-disputed individuals concerning their right to challenge the initial age assessment to recourse in the area of routing and dispersal. Since no information concerning age assessments is transferred to the Initial Accommodation unit to which age-disputed young people are routed and dispersed, this routinely means that age-disputed young people who may be children are only identified upon arrival. This suggests that age-disputed young people who could be children may not be identified and consequently fall through the gaps in protection.

Difficulties establishing whether an age assessment has already occurred prior to dispersal were also reported. Legal practitioners interviewed highlighted their concern that dispersal seriously complicates their ability to challenge the client's original assessment as local authorities will insist that young people are reassessed in the new local authority in which they find themselves. The lack of solicitors specialising in welfare and immigration in Wales also makes challenging age disputes more difficult.

It was found to be particularly difficult to get Welsh local authorities to reassess age disputes who have been dispersed even where fresh evidence has come to light. Local authorities in Wales must reassess since R(A) & R(M) did not overrule the ADSS Protocol that stipulates "in the event that new evidence has been brought forward, the host local authority should continue to reassess the age of the applicant, taking full account of all sources of information" (2005: 14). By not reassessing they may be ignoring the welfare and protection of a child in need in their area.

### **3 The lack of guidance, training, oversight, and alternative means of arbitration and mediation on age assessments in Wales is driving inconsistent practice**

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The absence of guidance is a critical factor contributing to poor practice in age assessments in Wales. Social workers highlighted the difficulties of making critical decisions on age in the absence of clear, succinct

guidance and requested guidance that would aid the development of best practice in this area.

It is recommended that a holistic approach to age assessments is adopted in line with recommendations for best practice under the UNCRC:<sup>65</sup>

“The (age) assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child, giving due respect to human dignity, and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt.”

*(Un Committee on the Rights of the Child 2006)*

The age assessment must be undertaken in line with the protection, provision and participation articles of the UNCRC: it should enable the child to fully express his/ her opinion, and ensure that all inconsistencies are put to the child for clarification. It must be carried out in a friendly and safe atmosphere by qualified, trained professionals. The best interests principle also requires that an independent advocate or guardian be appointed for each young person to represent the views and safeguard their rights. Under the current advocacy framework of the Welsh Government, age-disputed young people cannot access advocacy service apart from the WRC’s children’s advocacy. Independent advocates would also contribute to ensuring a fair and transparent process has occurred and in this way reduce the number of legal challenges to the outcomes of age assessments.

The current proposal to develop an All Wales Age Assessment Toolkit following the drafting of the All Wales Protocol on Unaccompanied Asylum Seeking Children is a welcome development in redressing this gap in child protection procedures. Such guidance must be based on the best interests of the child principle to fully reflect Welsh Government and local authority obligations to the UNCRC and UKBA’s

section 55 safeguarding duty. To fully do so, there is a need to include children’s rights advocates who can independently represent the best interests of the child in negotiations. There is a need for any such guidelines to provide explicit, step-by-step guidance on best practice in the conduct of age assessments, which must be implemented through the consistent training of social workers involved.

The lack of training and support for social workers conducting age assessments emerged as a key finding. Consistent training for social work students and practicing social workers is required, specifically concerning the cultural and ethnic background of separated children and the impact of war and traumatic journeys on young people.<sup>66</sup>

The contentiousness and costs involved in legal challenges to age disputes are driven by a lack of safeguarding, oversight and alternative routes of mediation. The consistent provision of independent advocates could help ensure procedural fairness during the assessment and could help prevent legal challenges to the process. There is a clear need for an independent, multi-agency body to conduct assessments - or at the very least - to review the results of local authority assessments when complaints are made against them. The establishment of mediation and arbitration routes prior to legal challenges and judicial reviews would reduce the contentiousness and costs involved in the issue. It would enable greater partnership between stakeholders. Most importantly, it would enable for a faster resolution of the increasingly protracted process of age disputes and take young people out of the limbo of the dispute process.

65 See UN Committee on the Rights of the Child General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children outside their Country of Origin and EX-COM Conclusion, Children at Risk, 5 October 2007, No. 107 (LVII) – 2007; [www.unhcr.org/4717625c2.html](http://www.unhcr.org/4717625c2.html).

66 WRC is establishing an external training programme from September 2011 and will be commissioning both generalist and specialist training on the needs of separated children.

# RECOMMENDATIONS

## To the Welsh Government:

- Work with the UK Government to ensure that all children living in Wales who are subject to the asylum process have their rights under the provision, protection and participation articles of the United Nations Convention on the Rights of the Child (UNCRC) fulfilled.
- Ensure that arrangements to safeguard and promote the best interests of children seeking asylum are embedded throughout the age assessment process in Wales.
- Ensure that the protection gaps facing separated children and age-disputed young people in Wales are addressed within Welsh Government's Children's Scheme under the Rights of Children and Young People (UNCRC) Measure (2011) by recognising separated children as rights holders, who have a right to have their voices heard, a right to receive a fair and transparent age assessment, and a right to be guided and supported through the process by an independent advocate.
- Demonstrate leadership on age assessment reform in Wales by ensuring that the development of all-Wales multiagency guidance reflects Welsh Government's statutory commitment to the UNCRC.
- Oversee the appointment and training of independent advocates to ensure that separated children have full access to the protections, provisions and participation rights of the UNCRC.<sup>67</sup>
- Provide training to children's advocacy workers across Wales concerning separated children in general, and the age assessment process in particular, to ensure that young people receive

the advocacy to which they are entitled. WRC has provided initial training on working with separated children to advocates in areas of Wales, however, further in-depth training for advocates on the complexities of age assessment is required.

- Work with WLGA and local authorities to establish alternative mediation and arbitration routes, based on a shared commitment to the best interests of children, to challenge age assessments.
- Establish independent panels comprised of suitably qualified professionals including psychologists, doctors, social workers, teachers, and children's advocates to determine age where this is subject to an ongoing dispute. These panels should work with the Welsh Local Government Association (WLGA), local authorities and the Care and Social Services Inspectorate of Wales (CSSIW) to ensure the legality and fairness of age assessments.

## To the Care and Social Services Inspectorate of Wales (CSSIW):

- Establish oversight mechanisms to ensure the legality and fairness of age assessments.
- Develop inspection criteria in order to measure and evaluate age assessment practice, process, and procedures in local authorities on an ongoing basis.

## To the Welsh Local Government Association (WLGA):

- Draft guidance for age assessments to be carried out by social workers in partnership with holistic, multiagency assessment teams (including paediatricians, psychologists, teachers, and medical professionals) over a reasonable period of time.
- Update the age assessment proforma to set out the benefit of the doubt principle at the beginning, avoid resembling the asylum interview by being more child-centred and collaborative, and ensure the input of other professionals in the assessment.

<sup>67</sup> The Scottish Refugee Council's Guardianship Service pilot provides a strong model for Wales to adopt. See Scottish Refugee Council Guardianship Project <http://www.aberfour.org.uk/scottishguardianshipservice.aspx>. The Welsh Government should consider the findings of the Scottish Guardianship Service project pilot particularly in respect to the links between separated and trafficked children.

- Produce a universal age assessment summary sheet, which can be shared with the UKBA. In line with data protection law and the principle of informed consent this summary sheet should include:
  - An outline of the age assessment process – where it was conducted, who was present (E.g. interpreter in person), whether the person assessed was informed of the reason for assessment);
  - Whether other sources of data were considered (E.g. documentation, medical reports, the opinions of other professionals such as teachers, carers and foster parents);
  - A summary of the social workers analysis and weight given to conflicting information;
  - How the decision was communicated to the child/ young person.
- Fulfil educational duties to provide education for children and young persons who are present in their authority.
- Ensure that the age assessment process in Wales is based on the concept of children as rights holders by:
  - Ensuring the proper application of the benefit of the doubt principle when dealing with all young people who claim they are children until such time as a holistic, multiagency age assessment has been concluded;
  - Consistently carrying out full age assessments. Where the benefit of the doubt has been properly applied and it is still decided that a young person needs an age assessment, local authorities should be consistent in carrying out full age assessments which reflect the social work core assessment framework and statutory requirements;
  - In accordance with UNCRC article 13, making sure that children are kept informed and understand the age assessment procedure and the implications of decisions throughout the process;
  - Providing young people with a competent CRB-checked interpreter, trained in working with children, who must be physically present at the assessment. Interpretation should not take place over the phone;
  - Ensuring that any inconsistencies arising in the age assessment interview are put to the young person;
  - Providing the young person with a full copy of age assessment;
  - Avoiding the conduct of age assessment interviews in police stations or prisons, except for an initial assessment to secure release of someone who could be a child, pending further assessment.

### **To the Care Council for Wales**

- Ensure that social workers in Wales receive ongoing training on best practice in age assessments and developments in case law. This could be provided by specialist advocacy organisations such as the WRC or legal practitioners with age assessment expertise. Incorporate best practice training on working with separated children and age-disputed young people into the Social Work curriculum across Wales.

### **To Local Authorities in Wales:**

- In conjunction with an independent panel of experts (including paediatricians, psychologists, teachers, social workers, children's advocates and foster carers) develop and provide comprehensive training on holistic age assessments to all members of local authority social services who are likely to come in contact with separated or age-disputed young people.

- Ensure holistic, transparent, legal and fair age assessment by:
    - Not relying too heavily on physical appearance, or on UKBA screening decisions or initial age assessment decisions;
    - Not placing inappropriate emphasis on the young person's journey to the UK;
    - Ensuring that young people's cultural and educational background are given fair and balanced consideration;
    - Duly considering the views of other relevant professionals including paediatricians, psychologists, teachers, social workers, children's advocates and foster carers into the decision on age.
    - Work with the WLGA to ensure that data protection law is not breached and information gathered in age assessments is not misused in the credibility findings of asylum decisions by sending the UKBA caseworker an appropriate summary of evidence. This should include:
      - An outline of the age assessment process – where it was conducted, who was present (ie interpreter in person, whether the person assessed was informed of the reason for assessment);
      - Whether other sources of data were considered (eg. documentation, medical reports, the opinions of other professionals such as teachers, carers and foster parents);
      - A summary of the social workers analysis and weight given to conflicting information;
      - How the decision was communicated to the child/ young person.
  - If a fuller report is needed (e.g. for a court or tribunal hearing), the social worker should write something specifically designed for that purpose in the same way as social work reports are prepared for the family court.
  - Continue to reassess the age assessments of young people in their area. Where young people who are challenging an age assessment are dispersed to Wales, in the event that new evidence has been brought forward, the host local authority has a duty to reassess the age of the applicant, taking full account of all sources of information (2005: 14). This duty is not affected by the 2009 *A & M* decision.
- To the UK Border Agency (UKBA):**
- Keep the harmful age dispute process to a minimum. Where the testimony and evidence is compatible with an individual being under 18, UKBA must treat them as a child and not enter them into the age dispute process.
  - Follow UKBA guidance and ensure the proper application of the benefit of the doubt principle when dealing with all young people who claim they are children until such time as a holistic, transparent, legal and fair age assessment has been concluded.
  - Do not proceed with the asylum claim until the age of the separated child has been established.
  - Do not accommodate young people who claim to be children with older adults. Young people undergoing an age dispute should be housed together in same-sex accommodation until such time as the dispute is resolved.
  - Demonstrate how the section 55 safeguarding duty is being implemented in policy and practice to ensure that children who are age-disputed are given the benefit of the doubt. Explain how the UKBA's Children's Champion is working to protect and safeguard children with regard to age disputes, what age assessment training UKBA staff are receiving,

and how lessons learned concerning age disputes will be applied across the agency.

- Publish statistics of the outcomes of age disputes to contribute to a greater understanding of the situation facing young people in Wales.

#### **To the UKBA and Local Authorities:**

- Enforce a clear separation of roles in the age assessment process. Local authority age assessments need to be based on social work competencies and should not incorporate UKBA concepts such as credibility or enforcement. Social workers should maintain the confidentiality and trust of age-disputed young people. Social workers need to acknowledge that they are accountable for their actions to all suspected children-in-need before colleagues, employers, UKBA and the law, and that these accountabilities may conflict.
- UKBA should take steps to ensure that financial and immigration pressures do not impact on the outcome of age assessments.

#### **To Local Authorities, UKBA and Advocacy Organisations:**

- Respect should be shown for the decisions of social workers who have followed correct procedures.
- Social workers should not feel pressured to assess age-disputed asylum seekers as being over 18. Managers who wish to overturn a social worker's decision must meet the child and ensure that a fair and accurate assessment takes place.
- UKBA should respect the decisions of social workers if it is found that the age assessment has been fairly conducted and should in no circumstances pressurize social workers to make adverse decisions.

- Children's advocates and legal practitioners must also respect when a fair age assessment has been carried out which finds the young person to be an adult. In such cases, it would be more helpful for advocates to find alternative avenues of providing support.

- Further research concerning the extent of age disputes, the manner in which they are undertaken and the impact of assessments and disputes on children in Wales is recommended.

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# APPENDIX

## APPENDIX A: Interviews

The interviews included the following key questions:

### Interviews with children

- What do you understand the purpose of the age assessment process to be?
- Can you tell me about the experience of having your age assessed?
- Where did this take place? How long after your arrival?
- Did you have a translator at the age assessment? Could you understand him/ her?
- What did the social workers ask you about? (Family/ physical/ mental health/ journey?) What parts did they focus on the most?
- Did the social worker ask you to clarify any points at the end of the assessment?
- Were you given advice on your right to challenge an assessment and how to do this?
- How did the experience of being age disputed affect your life in Wales?
- What advice would you give concerning how to improve the age assessment process?

### Conversations with social services representatives

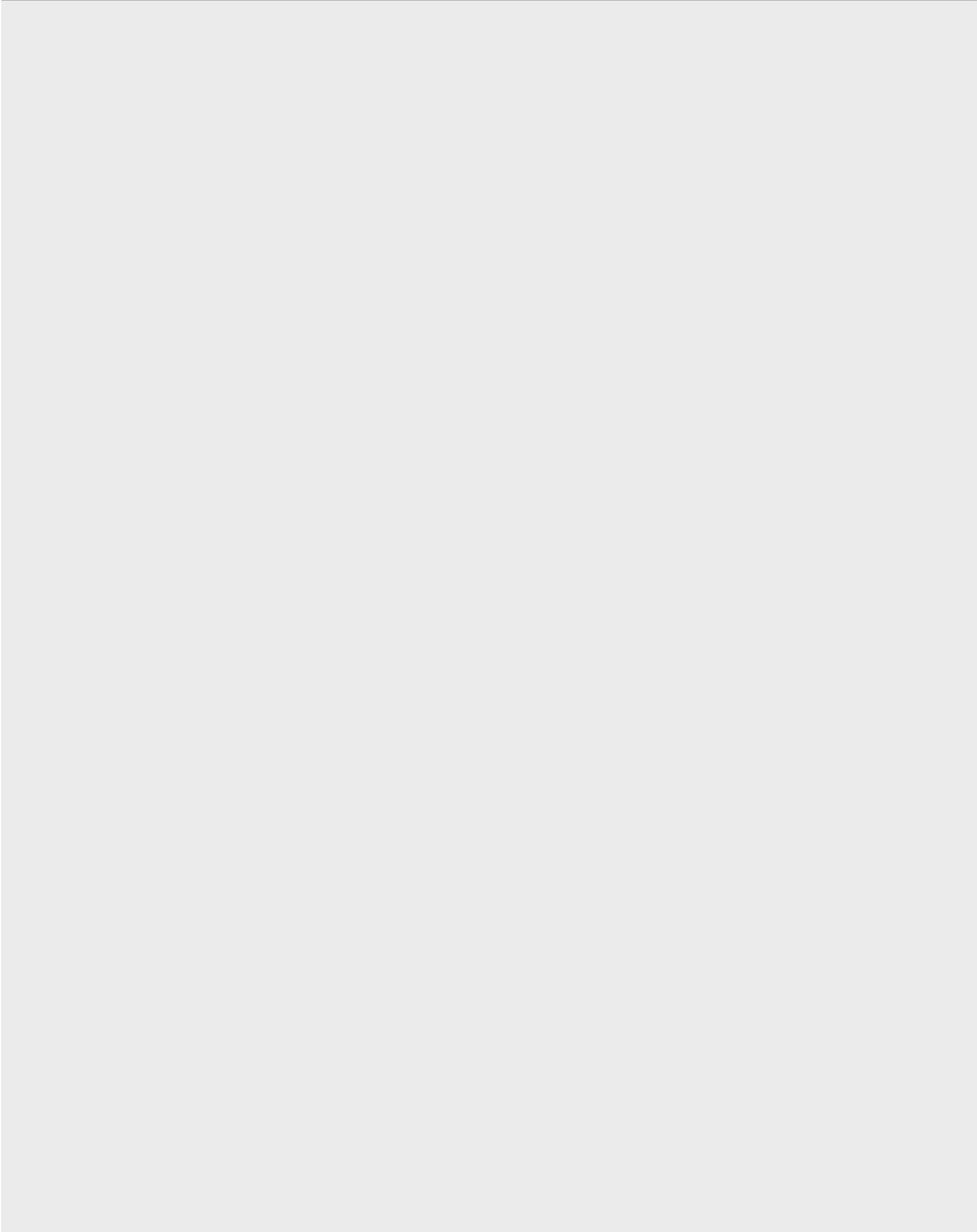
- How many i) age assessments and ii) reassessments do you conduct per annum?
- What training have you received around age assessments?
- What information do you draw on when conducting age assessments? How do you weight evidence/ documentation/ the opinions of other professionals?

- What information sharing protocol do you follow with UKBA?

- What concerns do you have with the age assessment process and how would you like to see it improved?

### Interviews with other stakeholders

- What elements of good practice have you noticed in age assessments and reassessments in Wales?
- Do you have any concerns about the conduct of age assessments and reassessments in Wales?
- How does the age dispute process affect the asylum claims of separated young people in Wales?
- How does the age dispute process affect the welfare of separated young people in Wales?
- What recommendations would you have to improve the age assessment process in Wales?





The full version of this report is available online at:  
**[www.welshrefugeecouncil.org](http://www.welshrefugeecouncil.org)**

Should you require further information please contact  
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**029 2048 9800**

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